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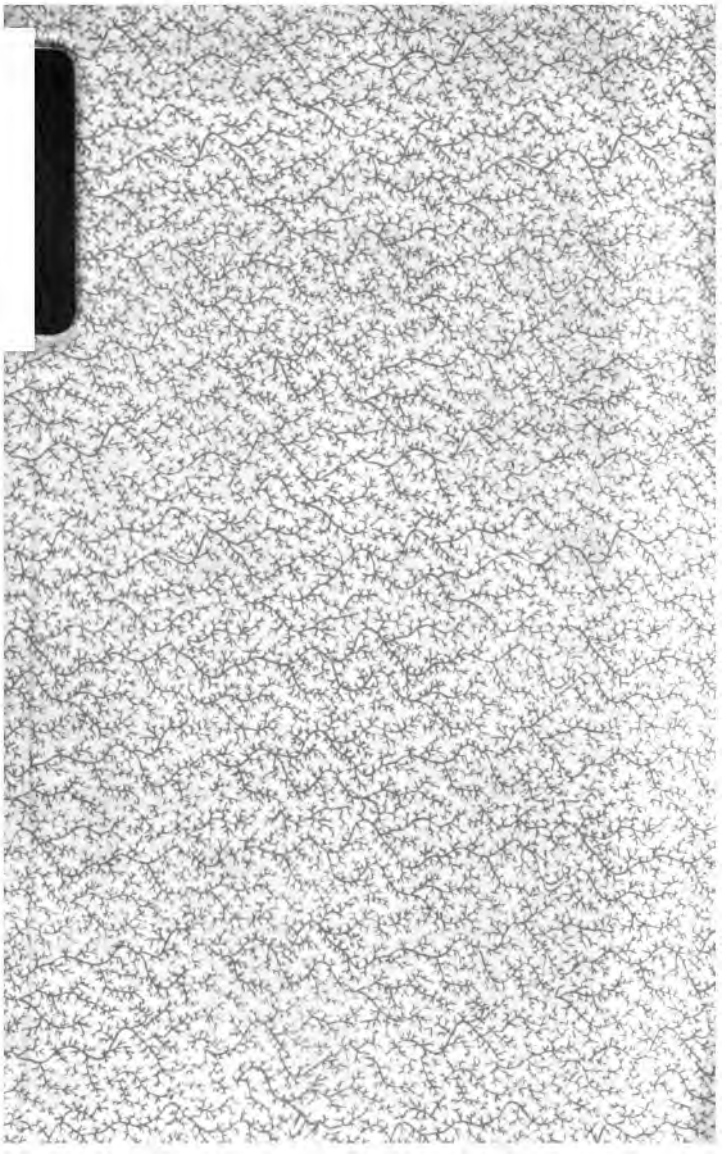

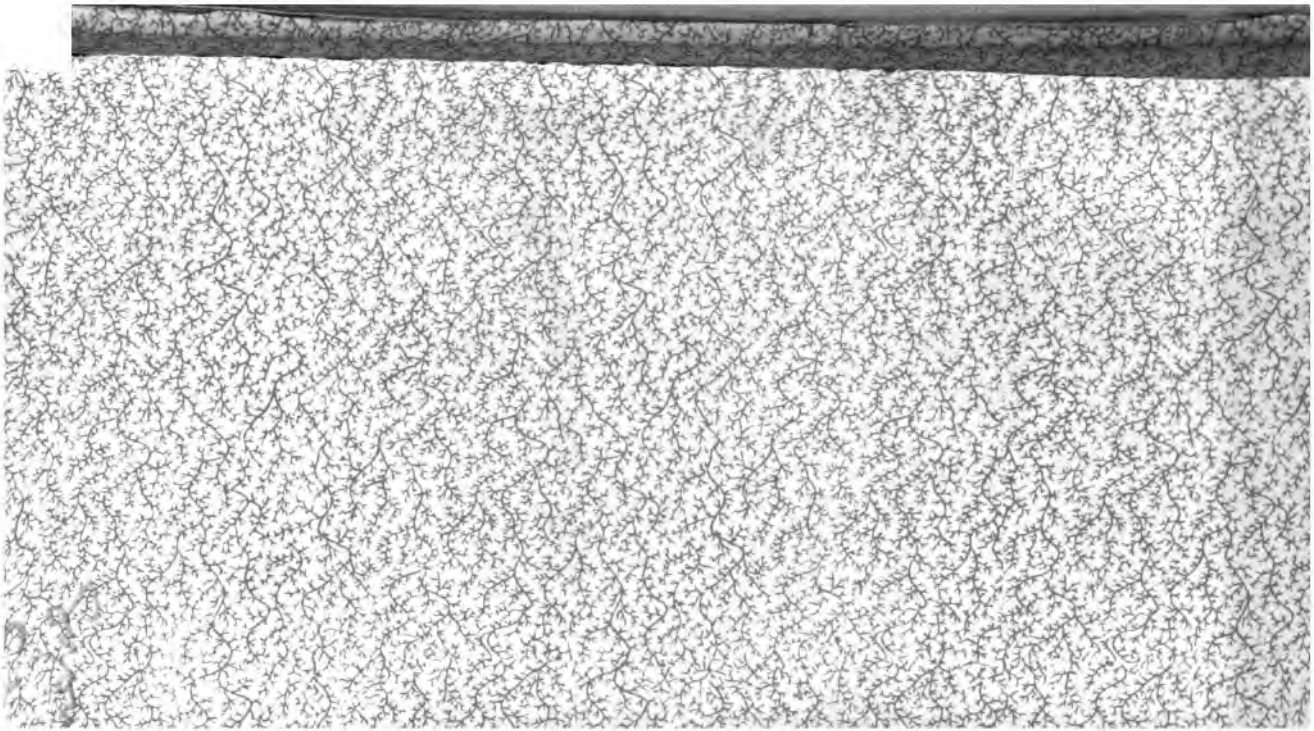

ROBBERY

OF THE

BANK OF PENNSYLVANIA IN 179[illegible].

THE TRIAL

IN THE

SUPREME COURT

OF THE

STATE OF PENNSYLVANIA.

REPORTED FROM NOTES BY T. LLOYD.

Upon which the President of that bank, the Cashier, one of the Dir (who was an alderman) and another person who was the high of Philadelphia; were sentenced to pay PATRICK LYON *two dollars damages*, for a false and malicious prosecution without either reasonable or probable cause.

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THE

IMPORTANT AND INTERESTING

TRIAL

OF

SAMUEL M. FOX, ESQ. *President of the Bank of Pennsylvania;* JONATHAN SMITH, ESQ. *Cashier;* JOHN C. STOCKER one of the directors of the same institution, and also one of the aldermen of the city of Philadelphia, and JOHN HAINES, late high constable of the said city. At the suit of PATRICK LYON, to recover damages for false imprisonment on a charge of robbing the bank of Pennsylvania in 1798, before the Supreme Court of the

COMMONWEALTH OF PENNSYLVANIA.

Present YATES, SMITH, and BRACKENRIDGE, associate justices.

Tried by a special jury, composed of the following citizens:

1 William Garrigues, insurance surveyor, foreman,
2 Augustus Fricke, merchant,
3 Anthony Taylor, merchant,
4 James Barclay, grocer,
5 Charles Shaffer, sugar-refiner,
6 Nathan Sellers, wire-worker,
7 Henry Richards, merchant,
8 Andrew Kennedy, soap boiler,
9 Benjamin Taylor, bricklayer,
10 James Stokes, gentleman,
11 Robert Ervin, livery stable keeper,
12 Amos Taylor, merchant,

Counsel for the Plaintiff.

A. J. DALLAS, J. HOPKINSON, J. W. CONDY, and M. LEVY.

Counsel for the Defendants.

W. LEWIS J. INGERSOL and W. RAWLE.

J. W. CONDY

Opened the cause for the plaintiff, and in order to shew the nature of the action read the following declaration:

IN the Supreme Court of Pennsylvania of March term, in the year of our Lord one thousand eight hundred and one.

Philadelphia County SS.

Samuel M. Fox, Jonathan Smith, and John Clement Stocker, all late of the city of Philadelphia, Esquires, and John Haines, late of the same city, high constable; were attached to answer Patrick Lyon in a plea of trespass on the case: and thereupon, the said Patrick, by Alexander James Dallas his attorney, complains for that, whereas the said Patrick, now is a good, honest, just, and faithful citizen of the said state of Pennsylvania, and hath always, from the time of his nativity, hitherto, behaved and governed himself as a good, honest, just, and faithful person; and hath always been accepted, esteemed, respected, and reputed as such, amongst all his neighbours and other good citizens, of the said state, to whom he was known, and hath never been guilty, or concerned in, nor suspected, to have been guilty of, or concerned in, any felony, burglary, larceny, or robbery, or any other such crime or offence, by means whereof, he, the said Patrick, had deservedly gained and acquired to himself, the good opinions and credit of all his neighbours, and other good citizens, of the said state, to whom he was known....Yet, the said Samuel M. Fox, Jonathan Smith, John Clement Stocker, and John Haines, well knowing all and singular, the premises: but contriving and maliciously intending wrongfully, and unjustly, to injure the said Patrick, in his aforesaid good name, fame, and credit; and cause him to be esteemed, held and reputed, amongst his neighbours, and the good citizens of the said state, to be a felon and a thief, and a person guilty of larceny, and robbery; and of being concerned therein, or of being accessary thereto, and to cause him to undergo the pains and penalties by the laws of this state, provided, and inflicted on those who are guilty of felony, larceny and robbery, and of being concerned therein, or of being accessary thereto, and to cause him to be imprisoned, and to be kept and detained in prison, or otherwise, to injure him under pretext of justice and legal process, heretofore to wit, on the twenty first day of September, in the year one thousand seven hundred and ninety eight, at the city

of Philadelphia, aforesaid, in the county aforesaid, falsely and maliciously, without any reasonable or probable cause, charged and accused, the said Patrick, with being concerned in a larceny which had been committed, at Philadelphia, aforesaid, in the county aforesaid, on the goods, chattels, and bank notes, of the bank of Pennsylvania, on the night of the first of September, in the year one thousand, seven hundred and ninety eight: and then and there, that is to say, on the said twenty first day of September, in the year one thousand seven hundred and ninety eight, at the city of Philadelphia, aforesaid, in the county aforesaid, falsely, and maliciously, and without any reasonable, or probable cause, arrested him, and caused and procured him to be arrested and taken into custody, and then, and there, that is to say, on the twenty first day of September, in the year one thousand seven hundred and ninety eight, at Philadelphia, aforesaid, in the county aforesaid, falsely and maliciously, and without any reasonable or probable cause, caused and procured him to be committed to, and into the custody of the keeper of the goal, of the said city and county of Philadelphia, for the said supposed offence: and the said Samuel M. Fox, Jonathan Smith, John Clement Stocker, and John Haines, did, thereupon, falsely and maliciously, and without any reasonable or probable cause, cause and procure, the said Patrick, to be kept and detained in custody, in the said goal, under pretext of his having been accessary to the said larceny, for a long space of time, to wit, from the twenty first day of September, in the year one thousand seven hundred and ninety eight, until the fourteenth day of December, in the said year; and until the said Patrick Lyon, on the same fourteenth day of December, at Philadelphia aforesaid, in the county aforesaid, with Richard Gray and William Bryden, the bail of the said Patrick, had acknowledged and signed a certain recognizance to the commonwealth of Pennsylvania: to wit, the said Patrick Lyon in the sum of three thousand dollars, and the said Richard Gray, and William Bryden, each, in the sum of one thousand dollars, conditioned for the appearance of him, the said Patrick Lyon, at the next mayors court, of the city of Philadelphia, to be holden in and for the said city, there to answer such charges as might be preferred against him, and not to depart the said court without licence in there from: and in the mean time, to keep the peace, and be of

good behaviour towards all the citizens of this commonwealth, and in particular, towards Jonathan Smith, cashier of the bank of Pennsylvania. And afterwards, to wit, at a general session of the peace, at a mayors court, held in and for the city of Philadelphia, at the city hall, in the said city, on Monday, the seventh day of January, in the year of our Lord one thousand seven hundred and ninety nine, before Robert Wharton Esquire, mayor of the said city, Alexander Wilcocks esquire, recorder of the said city, and Michael Hillegas, Gunning Bedford, and John Jennings esquires, aldermen of the said city, and others, their fellows aldermen assigned to keep the peace, in and for the said city, and also to hear and determine divers felonies, trespasses, and other misdeeds committed therein, they the said Samuel M. Fox, Jonathan Smith, John Clement Stocker, and John Haines, did falsely and maliciously, and without any reasonable or probable cause, prefer, and cause, and procure to be preferred, to the grand inquest of the said commonwealth of Pennsylvania, then and there upon their respective oaths, and affirmations, enquiring for the said city of Philadelphia, a certain false bill of indictment against him the said Patrick, by the name and description of Patrick Lyon, late of the city aforesaid, locksmith, charging and accusing, and purporting, for that whereas a certain Isaac Davis, late of the city aforesaid, house carpenter, on the first day of September, in the year of our Lord one thousand seven hundred and ninety eight, in the city aforesaid, and within the jurisdiction of the said court, with force and arms &c. one hundred and sixty four thousand dollars, in bank notes, of the bank of Pennsylvania, signed by S. M. Fox, president, and Jonathan Smith, cashier, of the value of one hundred and sixty four thousand Spanish milled dollars; of the goods and chattels of the president, directors, and company of the bank of Pennsylvania, and then and there, being found, then and there did feloniously steal, take and carry away, contrary to the form of the act of assembly, in that case made and provided, and against the peace and dignity of the commonwealth of Pennsylvania: and also that the said Isaac Davis, afterwards, to wit, on the same day and year last aforesaid, and within the jurisdiction of the said court with force and arms, &c. the said goods and chattels, last mentioned by some unknown person before that time, feloniously

stolen, taken, and carryed away unlawfully, wilfully, and maliciously, did receive, and the said Isaac Davis well knowing the said goods and Chattels, last mentioned, to have been before that time feloniously stolen and carried away, contrary to the statute in that case, made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania. And further charging, accusing, and purporting, that Patrick Lyon, late of the city aforesaid, Locksmith, (him the said Patrick the Plaintiff, meaning) before the said felony committed as in form aforesaid, to wit, on the first day of September, in the year aforesaid, at the city aforesaid, and within the Jurisdiction of the court, did feloniously, and maliciously, incite, move, procure, and abet, the said Isaac Davis, to do and commit the said felony, in manner and form aforesaid, contrary to the Act of Assembly, in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania, which said bill of Indictment, they the said Samuel M. Fox, Jonathan Smith, John Clement Stocker, and John Haines, did then and there *maliciously* strive and endeavour to sustain, and cause the same to be formed, a true bill by the said grand inquest, against the said Patrick Lyon; but the grand Inquest aforesaid, did, then and there, return into the said Mayors Court, of the session so holden, as aforesaid, that, the said bill, as against the said Isaac Davis, was a true bill, but as to the said Patrick Lyon, they returned the same *Ignoramus*, whereupon, the said Patrick, was thereupon, then and there, discharged of and from the said bill of Indictment, and the crime therein charged against him, and so the prosecution aforesaid, preferred or caused to be preferred, as aforesaid, by the said Samuel M. Fox, Jonathan Smith, John Clement Stocker, and John Haines, for the cause aforesaid was determined to wit, at the city of Philadelphia aforesaid in the county aforesaid, and the said Patrick, in fact saith that, he is not, nor was in anywise guilty of the said supposed offence so charged upon, alledged against, and imputed to him as aforesaid, to wit, at the city of Philadelphia, aforesaid, in the county aforesaid.

And whereas, also the said Samuel M Fox, Jonathan Smith, John Clement Stocker, and John Haines, of their further malice towards the said Patrick Lyon, afterwards to wit, on the said twenty first day of September in the

Year of our Lord one thousand seven hundred and ninety eight at the City of Philadelphia aforesaid, at the County aforesaid, did falsely and maliciously, and without any reasonable cause, again impose on him the Crime of being an accessary before the fact to a Felony committed by a certain Isaac Davis, and afterwards to wit, at the said general Session of the Peace at a mayors Court, holden in and for the City of Philadelphia aforesaid, in the Commonwealth of Pennsylvania, at the City Hall, in the said city, on Mondy, the seventh day of January, in the year of our Lord one thousand seven hundred and ninety nine, before Robert Wharton Esquire, mayor of the said city, and Alexander Wilcocks Esquire, Recorder of the said city, and Michael Hillegas, Gnnning Bedford, and John Jennings Esquires, Aldermen of the said city, and others, their fellows, assigned to keep the peace in and for the said city, and also to hear and determine divers felonies, trespasses, and other misdeeds committed therein, they the said Samuel M. Fox, Jonathan Smith, John Clement Stocker, and John Haines, did falsely and maliciously, and without any reasonable or probable cause whatsoever, cause and procure another false Bill of Indictment, to be preferred against him the said Patrick Lyon, of the city aforesaid, Locksmith, for that, whereas the said Patrick on the first day of September, in the year of our Lord one thousand seven hundred and ninety eight, at the city aforesaid, within the jurisdiction of the said court, did feloneously and maliciously incite, move, procure, and abet, the said Isaac Davis, at the city aforesaid, in the county aforesaid, with force and arms, one hundred and sixty four thousand dollars in bank notes, of the Bank of Pennsylvania, signed by Samuel M. Fox, president, and Jonathan Smith cashier, of the value of one hundred and sixty four thousand Spanish milled dollars, of the goods and chattels of the President Directors and Company of the Bank of Pennsylvania, then and there being found, then and there feloniously to steal, take and carry away, contrary to the form of the Act of Assembly in that case made and provided, and against the peace and dignity of the Commonwealth, of Pennsylvania, of which said charge, he the said Patrick, was in due form acquitted and discharged, by the said grand Inquest of the Commonwealth of Pennsylvania, *then* and there enquiring for the body of the said

city, who did not find the said bill; but returned to the same Ignoramus, and the said Patrick Lyon, in fact saith, that, he the said Patrick, is not nor was in any wise guilty of the premises in the manner aforesaid, charged upon him. By means of which said premises, and other prosecutions and wrongs herein before mentioned and done, committed and carried on the said Samuel M. Fox, Jonathan Smith, John Clement Stocker, and John Haines, against the said Patrick, he the said Patrick, was not only imprisoned and kept and detained in prison, in manner and for the time aforesaid, during which he was prevented from carrying on his necessary and lawful affairs and business: but that he hath also, been greatly hurt injured and prejudiced in his aforesaid good name, fame, and reputation, and forced and obliged to lay out a large sum of money in and about the defence of himself, and the manifestation of his innocence in the premises, and about the obtaining of his release and discharge out of custody, to wit, at the city of Philadelphia aforesaid, in the county aforesaid, and he also is and hath been on occasion of the several premises aforesaid, otherwise greatly injured and damnified to the amount of fifty thousand dollars and thereupon he brings suit &c.

A. J. DALLAS Atty for Pltff. — JOHN DOE and RICHARD ROE } Pledges of prosecutor.

Mr. Condy continued his observations and said that, on the first of September, one thousand seven hundred and ninety eight in the evening, the bank of Pennsylvania was robbed, to the amount of 164,000 dollars.

The defendants chose to suspect and impute to the plaintiff this offence.

In January, 1799, a bill of indictment was presented.

This bill Condy said, was instituted without probable cause, and motives which were wrong influenced the defendants to that step.

It will appear in evidence, that, in May 1797 the plaintiff was employed by the bank of Pennsylvania to work for the book vault. In July he finished two doors under the direction of one Robinson, a carpenter for the bank.

Lyon at that time warned them against the locks, as insufficient for the purpose to which they were to be applied.

On the fourth, or fifth of August 1798, the yellow fever assumed a very alarming appearance, and Lyon was again

employed by the bank for several things, on its removal from free masons lodge to carpenters hall.

It seems that, on the fourth of August an attempt was made to open the cash vault door of the bank, in lodge alley; though the fact came out afterwards, it was not mentioned to the plaintiff at the time.

On the removal, of the bank Samuel Robinson brought the same two iron doors on a dray, for the purpose of having them altered that they might be fitted for doors to the cash vault.

Lyon again and again stated the insufficiency and inferiority of such locks as were on them, however he was still disregarded.

He had been before employed on Friday to work for Stocker. On Saturday the doors were hung: but the locks not secured on. On Monday the 14 August, the whole was fixed. While the doors were in Lyon's shop, Samuel Robinson and Isaac Davis who was a stranger to Lyon came in, and after staying some time they went away.

On the 20 or 22 of August, Lyon went to Market street wharf to buy peaches. He there met Robinson and the stranger, he supposed from their confused and embarrased manner that his absence would be prefered to his company he separated from them, and determined to go to Lewistown.

On the 28th of August, Mr. Lyon looked out for a passage having found an opportunity he went on board with his apprentice, and sailed the same day. And on the 1st of September, he arrived at Broad-kill creek, near Lewistown. His apprentice was shortly after taken sick, and he carried him as far as Fleetwoods Tavern: his apprentice was very weak, and had to lay down by the road. On the 4th of September, he died of the Yellow fever. During this period Mr. Lyon was occupied in nursing his apprentice who was a favorite with him.

He was 150 miles off when the robbery was committed! between the 12th and 16th of September news was brought to Lewistown that the bank had been robbed. A conversation took place between M Lyon and Mr. Hunter on that subject, in which he was informed that he was suspected. Struck with surprise he immediately determined to return to Philadelphia. On Tuesday the 18 of September he sailed from Lewistown to Brandywine where he arrived the 20th of that month. He found Wilmington

was as dangerous, as to the Yellow Fever, as Philadelphia. He tried to get a conveyance to Philadelphia in order to meet his accusers, but he could get none, and therefore determined to go on foot. It was a remarkable hot day, on the 20th he walked to Mr. Stockers in the neck, but very much exhausted as he had taken but little nourishment on his journey, when he reached Mr. Stockers' he asked for some refreshment, but he got none, he then proceeded towards Lebanon to obtain it. He met some Chairs going to Stockers, and he asked if Mr. Stocker was in them he was answered yes. Mr. Stocker asked who took him? he answered, nobody took me, I came myself. Next morning he went voluntarily to Stockers for examination. When he was in Philadelphia he understood that a warrant had been issued against him by Alderman Jennings, he waited upon Mr. Jennings, who could not find the warrant, and therefore let him go at large. He went to Mr. Stocker on Friday the 21st and there he found Mr. Stocker, Mr. Wharton, and Mr. Fox....he submitted himself to their examination. He does not know there was any oath to support the charge. They decided, that Lyon should go to goal, there was no circumstance alledged against him, but that he had had the doors in his possession before the robbery, the bail required was 150,000 dollars. It was impossible he could procure it.

He was therefore committed to goal, in which, there was twenty or thirty cases of yellow fever, and a number of deaths followed. He was neglected while there, and reduced to extreme want, the access of the few friends he had was denied.

He remained in goal twelve or thirteen weeks, without a bed to lie on. Sometimes confined in a solitary cell, during which, he was so sick that the hair fell off his head.

After four or five weeks he was sent for again by Mr. Stocker, and underwent another examination, which is signed by him. He stated to them his suspicions relative to Robinson and the stranger, whom he had seen at Market street ferry, and mentioned the circumstances relative to Robinson and Davis. He did not know Davis's name, he was a stranger, but he recommended to them to send for Robinson, and ask him when he last saw Lyon, and who was at that time in Robinsons company, this would lead them to the knowledge of Davis.

Forsooth say they Davis is a good character &c.

So that this intimation seemed to be entirely neglected *and Lyon* was remanded to prison. Yet it turned out alte

wards that Davis was the man who had committed th Robbery.

Lyon was afterwards brought before Judge Shippen, o Habeas Corpus. And then the defds. were examined on oat Mr. Fox was examined.

The bail was reduced to 6000 dollars but he could n procure it.

On the 20th of November it was published in the new papers, that Isaac Davis was the robber, and nearly the whc of the money was found upon him.

Isaac Davis, by threats and promises confessed that h and one Cunningham, a porter to the bank who died in Ph ladelphia of the yellow fever, were the only two perso concerned in the robbery.

The Bank were bound to bring Isaac Davis to justice b they suffered him to escape.

Instead of discharging Lyon, and compensating him fo his sufferings, they went on with a prosecution against hir Not for robbery, but as an accomplice.

The bill of indictment was presented two months after a was discovered, yet notwithstanding Lyon was continued i prison.

On the 12 December 1798, he was brought before th supreme court, and bail, was demanded for 2000 dollars.

Bail was accordingly given before Alderman Wharton was alledged that Lyon had threatened Jonathan Smith ar he was upon that allegation bound to keep the peace.

On the 12 January, 1799, the indictment was sent to th Grand Jury to which Samuel Fox, Jonathan Smith, and Jol Haines were endorsed as witnesses.

To excite the idea that the locks were opened with fal keys, they talk about plaister of paris, clay, putty, wax & as means of procuring a model or impression of the key.

The Jury will have to keep in mind, the importance of fact to which I shall call their attention. Suspicion is ente tained of false keys and Patrick Lyon. The cause will tu upon another hinge. Not a word is said of the real ke being frequently left with Cunningham, their indoor porte Keys which were frequently used by him to open the vaul in the morning, which vaults he had previously closed th preceding evening, we shall shew you that that porter h been often entrusted with those keys, and that he has be seen sleeping abroad with the keys tied round his neck.

JUDGE SMITH,

Here declared on hearing these facts he found the defdts. acted as officers of the bank, he therefore would not sit on this case as he is a stockholder in that institution. He therefore withdrew.

MR. CONDY *continued.*

The morning after the robbery the bank door was found open, Cunningham opened the front door and inner door to admit Annessly.. .He slept up stairs, the back door must have been opened by some person on the inside, because it was barred on the inside, and no lock or bolt on it which could be affected from the outside.

If the officers of the Bank instead of looking to Lyon had looked to the stranger who accompanied Mr. Robinson to Lyons, when the doors of the vault were taken to his shop to their own porter Cunningham and to Davis they would soon have found the robbers who were those they afterwards discovered to be the perpetrators of that fraud.

The proceedings of the Legislature were next adverted to.

1st. Page 18 from the journal of the house of Representatives. An extract from the Governor's message of December 7, 1798.

" Under these circumstances, it affords me peculiar pleasure to inform you, that the recovery of the notes and cash, of which the Bank of Pennsylvania had been robbed (in a manner, and at a season, that will not admit of any imputation upon the integrity or vigilance of its officers) affords a critical assurance, that there will be no abatement in the revenue arising to the state from the dividend on the stock of that institution. This source, therefore, may be expected to produce a sum of 80,000 dollars; and the interest on the stock of the United States, the property of Pensylvania, will yield a sum of 6,840 dollars. The fluctuating revenues, collected from the Secretary's office and the Land-office, the duties on sales at auction, the fees on writs, marriage and tavern licences, court and militia fines, and the arrearage of state taxes, will probably, furnish 70,000 dollars; and these several sums, added to a surplus of 80,000 dollars, on which we may fairly calculate as resulting from the receipts of the current year, establish an aggregate fund of 186,840 dolls."

2d. Page 34. It appears that part of the message was ordered to be referred to a Committee.

3rd. Page 44. The Committee were appointed and consisted of Messrs. Preston, Fraily and Weaver.

4th. Page 97. The following report was read.

" The committee, to whom was referred that part of the Governor's address relative to the robbery of the Bank of Pennsylvania, together with his communications on that subject, made report, which was read, as follows, viz.

That on the night of August 4th last, some villains *entered* the Banking-house in Lodge-alley, and made an unsuccessful attempt to *force* open the doors of the cash vault, and to pick the lock of the iron chest used by the second Teller, but the institution sustained no loss; and as it was apprehended that the attempt would be renewed, and considering the insecurity of the building, and the impossibility of making such repairs to it, as would render it safe to trust the property any longer, the *porters were armed*, and directed to sleep in the Banking-house, in order to guard against the success of future attempts.

The immediate removal of the Bank to Carpenter's-hall was proposed. Arrangements for that purpose were made with the Land-officers, in whose possession it was. This building, from its construction, and the improvements which had been made to it when in the occupancy of the Bank of the United States, was thought perfectly secure; but previously to the removal, which took place on the Saturday following, a new patent lock was put to the outer door, and two iron doors were fitted to the cash vault, with locks which had been used for the book vault, and which were of a better construction than any which could at that time be procured in the city; the precaution of obliging the porters to sleep in the Bank was continued, and the watchmen were charged to be particularly vigilant.

Two days previous to the late robbery, Nathaniel Potter, one of the porters, who is since dead, was seized with the yellow fever, and no confidential person could be procured to supply his place in the Bank. Thomas Cunningham, the other porter, who is also since dead, slept there alone, and early on the morning of Sunday, the second day of September, Mr. Annesly, the runner, having occasion to go to the Bank, to complete some business which he had left unfinished the evening before, found the back door of the Banking-house open, and looking into the Banking-room, he, to his great surprise, discovered the doors of the *cash vault likewise* open. He immediately roused the por-

ter, who was asleep up stairs. Cunningham came down, and unlocked the front as well as the inner door of the house; they went into the Banking-room, and found all the window-shutters secured, the back door unbarred and the doors of the cash vault unlocked.

Mr. Annesley went directly to the residence of the Cashier, about three miles from town, and apprised him of what he had discovered.

A messenger was immediately sent to the President of the Bank, and upon his coming to the city he found the Cashier, with the runner and porter, in the Bank. Upon an examination of the house, it was found that the locks had been opened by false keys, for no injury was done to the wards of any of them, nor was there any appearance of force having been used.

The loss which the institution had sustained was ascertained to consist in bank notes and gold, which were taken out of the cash vault; the amount is one hundred and sixty-two thousand eight hundred and twenty-one dollars and sixty-one cents.

Measures were then taken for the further security of the Bank, and employing several persons to search after suspicious persons. A meeting of as many of the Directors as were in the vicinity of the city was called, and the particulars of the loss, and the steps taken in consequence of it, were communicated to them. Early the next morning the circumstances were communicated by the President to the Governor.

It may not be improper here to notice the distressed situation of the city at this period. A pestilential fever raged in every quarter of it, which no doubt, facillitated the perpetration of the villainy, and by opposing insuperable difficulties to search after those concerned in it, enabled them for a time to elude detection.

Every exertion was made by the officers and Directors of the Bank to discover the perpetrators of this flagrant robbery, Letters were immediately sent to New-York, Wilmington and Baltimore, apprising the different Banks in those cities of the event, and soliciting their aid in detecting the villians. Advertisements were published throughout the United States, cautioning the public against the receipt of the post notes stolen, considerable rewards were offered for the apprehension of those concerned in the robbery, in addition to that of one thousand dollars promised in the Governor's proclamation.

Several persons were arrested upon suspicion, and amongst those is Patrick Lyon, the Smith, who was employed in fitting the iron doors of the cash vault, and without whose privity, it is believed this robbery has not been committed.

After much painful anxiety and unceasing vigilance, on the part of the officers of the Bank, they had the satisfaction to discover the perpetrator of this daring robbery, so that the whole amount of the property stolen has been recovered, except about three thousand two hundred dollars.

One Isaac Davis, a carpenter by trade, had an account opened in this Bank; and the first circumstance which excited the suspicions of the President and Cashier against him was a deposit of sixteen hundred dollars. Enquiry was made as to his circumstances and character, which were found to be such as to induce the officers to watch his conduct. On Saturday, the 17th November, just before the Bank closed, he deposited three thousand nine hundred and ten dollars. The suspicions were then increased, and it was thought proper to enquire at the Banks of the United States and of North-America, whether he had accounts open with those institutions, and on Monday morning such information was obtained, as left no doubt that he was the robber.

He was then invited to the house of the Cashier, upon a pretence which excited no apprehension of the views of the officers, and there, partly by threats of an immediate arrest, and partly by promise of an intercession with the Governor for a pardon, a confession of his guilt was extorted from him.

The disclosures made by him criminated only Thomas Cunningham, the late porter, and himself, for he repeatedly declared that they alone were concerned in the robbery. It was before remarked, that Thomas Cunningham, slept in the Bank the night the robbery was committed, that he was taken ill of the yellow fever the day after, and died in the course of the week. Davis acknowledged that they had divided the money stolen, and that the deposits he had made in the different Banks were part of his share.

He then gave his checks for the balances of his accounts with them, and immediately after, accompanied by the President and Cashier, went to the house where he lived, when he delivered up to them a large quantity of bank notes.

They then went to the house of the President, where the notes were counted, which, together with the checks,

amounted to one hundred and one thousand and forty-four dollars and forty-two cents.

He then assured them that he had returned all he was possessed of, and that the remainder of the property stolen would be found at the house where Cunningham died.

The Cashier then went and informed R. Wharton, Esq. Mayor of the city, of the fortunate discovery, leaving Davis under the care of the President.

They searched the house described by Davis, but without success.

The Mayor then informed Davis, that unless he made a full disclosure he would commit him to prison, and have his house searched, and by threat and promises an acknowledgment was obtained from him, that he had visited Cunningham the day he was taken ill, and had received from him the remainder of the money stolen, a great part of which he had still secreted.

They then went to Davis's house, and he returned them the additional sum of fifty-seven thousand seven hundred and forty-five dollars and eleven cents in gold and in bank notes.

They had then recovered one hundred and fifty-eight thousand seven hundred and seventy-nine dollars and fifty-three cents.

Davis also assigned property, which had cost him a short time before eight hundred dollars.

They then left him to his own reflections, and deposited the money in the Bank.

Davis declared that the plan of the robbery originated with Cunningham, who procured the false keys, and that he does not know who made them.

The committee have further to add to this lengthy detail, that in order to secure the balance of the money stolen, the Cashier, on the 21st of November, inclosed a bond and warrant of attorney to J. Davis, drawn in favour of the President, Directors and Company of the Bank, for the sum of three thousand dollars, requesting him to execute the same. This was intended to secure some real estate he held in the county of Delaware.

On the 24th of the same month (November) Benjamin Brannon, Esquire, Associate Judge of Delaware county, and uncle to the said Isaac Davis, called on the Cashier of the Bank, and informed him that he had the bond and warrant of Attorney executed by Davis, which he would deliver

to him (the Cashier) on condition of procuring a pardon for the said Davis. This the Cashier declined accepting, being apprehensive that a prior bond and judgment might have been given by him, and upon enquiry he found, that on the 23d, which was the preceding day, the said Benjamin Brannon, Esquire, brought a declaration on a judgment confessed upon a bond, Isaac Davis to his mother Mary Davis, for the sum of two thousand four hundred dollars, dated the 21st November, which was entered the same day.

It appears to the committee that this bond given by Davis to his mother, and the judgment confessed upon it, was for the purpose of defrauding the Bank of the balance of the money stolen, and that the part which Judge Brannan has taken in the business is highly reprehensible, if not criminal.

The committee are of opinion that the President and Cashier of the Bank of Pennsylvania, for their care, vigilance and exertions, in detecting the robber, and recovering the money stolen from the said Bank, deserve the highest commendation."

The following was read to shew that the defendants knew Patrick Lyon to be innocent of the robbery.

" The committee appointed to prepare specific charges against Benjamin Brannon, Esquire, one of the Judges of the Court of Common pleas of Delaware county, made report, which was read, as follows, viz.

1*st.* That the aforesaid Benjamin Brannon, contrary to the duties of his office, endeavoured to prevent a certain Isaac Davis from being punished, whom he knew had robbed the Bank of Pennsylvania.

2*d.* That on the 21st of November last, Jonathan Smith, Esquire, Cashier of the Bank of Pennsylvania, sent a bond and warrant of attorney to Isaac Davis, to be executed by him, in favour of the President and Directors of the Bank of Pennsylvania, for the sum of three thousand dollars, they having received of the said Isaac Davis all the money, of which the Bank had been robbed, except the aforesaid three thousand dollars.

That on the said 21st of November, the said Benjamin Brannon came to the Cashier of the Bank with the aforesaid bond, unexecuted, and wished to be informed of the circumstances of the robbery, and of the return of a part of the money; and after having been informed by the Cashier also having stated to him that the President and Directors of the Bank, before they could prevail on Davis to acknow-

ledge the robbery and return the money, were obliged to promise him, that, if he returned the whole of the money, they would interfere for his pardon; and also having stated that it was just and proper that Davis's property should be bound for the payment of the remainder of the money, the said Benjamin said he would see Davis on the subject.

That on the said 21st of November, Benjamin Brannon wrote a bond and warrant of attorney for Isaac Davis to execute in favour of Mary Davis, his mother, for the sum of twelve hundred dollars, which sum was more than sufficient to cover all the property belonging to Isaac Davis; and that on the 23d of the same month, the said Benjamin Brannon went, in person, to Chester, and had judgment entered upon the said bond.

That the said Benjamin Brannon called several times on the Cashier of the Bank, between the 21st of November and the 24th of the said month, and impressed a belief on the mind of the Cashier, that Isaac Davis would tell who made the picks and keys, and at one of the times said that he had seen Davis, and thought he would get Davis to execute the aforesaid bond, in favour of the Bank, if it would operate as his compleat discharge.

That on the 24th of the same month, the said Benjamin Brannon called again on the Cashier of the Bank with the aforesaid bond executed in favour of the Bank, and said he was ready to deliver it, on condition that Davis's pardon should be obtained. In this particular the said Benjamin Brannon manifestly designed to deceive and defraud the President and Directors of the Bank, knowing that he had previously got a judgment entered against Isaac Davis in favour of his mother, sufficient to take all Davis's property, and without giving the least intimation of this circumstance to the Cashier. The Cashier did not accept of the bond, and when, on a subsequent day, the Cashier informed the said Benjamin Brannon that he had discovered that a judgment was entered against Isaac Davis in favour of his mother, he replied, that he knew nothing of that bond until it was handed to him, although at the same time, he knew it was written by himself.

That the said Benjamin Brannon has frequently said that he did not see Isaac Davis at any time after the robbery, until the 24th of November, although he acknowledged to the Cashier that he had seen him previous to the 24th of November last, and although Isaac Davis acknowledged a

power of attorney to his mother, before the said Benjan Brannon, on the 21st of November.

EVIDENCE.

1st. A bill of indictment was read to shew the Defendants had attempted to have the Plaintiff indicted by the Grand Jury. For the abstract of which, see the declaration.

JOSEPH RIZER'S Deposition as follows:

JOSEPH RIZER, of the city of Philadelphia, being duly sworn, doth depose and say, that, during the time he was Mr. Smith's hair dresser, the next day or shortly after the plaintiff was released from confinement, upon the prosecution instituted against him for robbing the bank of Pennsylvania, the deponent had a conversation respecting him with Mr. Smith, one of the above named defendants in which the deponent stated, that he saw Mr. Lyon, upon which Mr. Smithsaid did you by God, what has he got out? the deponent answered yes, I am sorry for that said Mr. Smith, what does he say? he says you have used him very cruel, by God replied Mr. Smith, we will use him worse, we are not done with him yet, we will try and and confine him longer, Mrs. Smith who was then present asked, "are you not afraid now he is loose" to which Mr. Smith answered "we have got him bound down and we have got him fixed so that he cannot sue us" after the bill against Mr. Lyon had been returned Ignoramus the deponent asked Mr. Smith "is Mr. Lyon got clear or is he condemned?" to which he replied, "he has got clear" the deponent then said, I suppose you will make him a compensation for his lost time and expences? he may think himself damned well off said Mr. Smith, that he has got off so easy, the deponent has heard Mr. Smith soon after Mr. Lyon's discharge from confinement, and whilst deponent dressed his hair, say, the plaintiff was a damned rascal, he should be hunted out of the country, that he need not expect any favours from him, we have, said Mr. Smith done his business for him, there is nobody will employ him of any consequence, he has lost all the work of the Bank and not a director will employ him, well said the deponent I think Mr. Lyon is a very honest man, at these words Mr. Smith's countenance changed and he looked displeased, but said the deponent, Lyon says he will sue the

Bank, and make them pay for it, at these words Mr. Smith answered warmly, he sue us, he cannot sue us, and if he does we can always have the Jury on our side, at the same time calling Mr. Lyon a rascal, scoundrel and the like.

The deponent being cross examined saith, he believes the first of the conversation to which he has refered was, he asked Mr. Smith how Mr. Lyon was, he answered, he could not tell, next day the deponent mentioned to him that Lyon was out, Mr. Smith then says is he, by God, deponent answered him yes, deponent says he never was desired by any body to have this conversation with Mr. Smith about Mr. Lyon, that he never was promised any thing for this deposition, that it is so long ago he forgets a good many things, he speaks the truth as far as he knows and no farther, that on a Sunday afternoon he met Mr. Lyon going to Lebanon and got talking together in the year 1798, that the conversation with Mr. Smith he cannot recollect whether it was in the forenoon or the afternoon, he generally dressed him between seven and eight o'clock in the morning or in the afternoon, that he attended Mr. Smith as his hair dresser and was at his house that day the conversation passed, no longer, than while the conversation lasted.

JOSEPH RIZER

Sworn and subscribed before me 31*st August* 1805.

J. YEATES.

William Fox's Deposition.

William Fox formerly of the City of Philadelphia, but now of Queen Ann's County in the State of Maryland, blacksmith a witness on behalf of the plaintiff being duly sworn, deposeth and saith, that this deponent worked with the plaintiff as a blacksmith, in the city of Philadelphia, in the year 1795, 1796, and 1797, for a period altogether more than two years, that in the summer of 1797 before the deponent left the employ of the plaintiff; the plaintiff was engaged by a certain Samuel Robinson a carpenter, who acted as the Agent of the Bank of Pennsylvania to make two Iron doors for the book Vault of the said Bank, that when the said Samuel Robinson proposed putting two old locks to the said doors the said plaintiff objected and desired the said Samuel Robinson to tell the President of the said Bank that such locks were not suitable for a Bank, their construction was so

simple that they could be easily opened, and also that t mode proposed for fixing the doors was unsafe, as they ou to be fixed in frames, that this deponent does not recoll whether the said Samuel Robinson brought any answer fr the President, but no alteration was made of the locks n in the mode of hanging the doors, that one of said locks longed to an old room door, and the other had a brass and was similar to the locks used for the Cabin doors Ships, that this deponent at the time of putting the said lo on the doors aforesaid, did not think them safe and is certair that he could have got ready made keys at Richards's or any other Iron Mongers to open them, that Samuel Robinson almost always attended for the Bank at the Plaintiff's shop while the said Iron doors were finishing, that this deponent never saw any man there of the name of Davis nor does he recollect ever seeing at any time the man of that name who has been charged with the robbery of the Bank that during the time this deponent was employed by the Plaintiff the Plantiff was an industrious punctual and honest man and from the knowledge of this Deponent as well as from general imformation this deponent declared when he first heard the Plaintiff accused of being concerned in the said robbery that he did not believe it possible and this belief is more confirmed by the general good character which the Plaintiff has ever since maintained.

WILLIAM FOX.

Affirmed and subscribed before me the 6th November 1805.

FREDRICK WOLBERT.

4th. P. LYON'S first examination before J. C. STOCKER, Esq. on the 21 September 1798, he being one of the City Aldermen, Lyon was asked what time he left the City of Philadelphia; he proceeded nearly as follows:

I sailed on Tuesday the 28th of August on board of a shallop, commanded by Edward Collins, bound to Broad-kill creek, and took with me my apprentice James M'Ginley, the next day being Wednesday the 29th, we sailed down the river, I never saw my boy in higher spirits from the time he came to me, on Thursday the 30th my apprentice began to complain of the yellow fever, we had a gale of wind and was obliged to put into Quahansey for safety, the next day, Friday 31st, my apprentice continued very sick and lost the use of his limbs and had it not been for me he would have

fallen over board. On Saturday the 1st of September we arrived in Broadkill creek, we went on shore, my apprentice seemed much better, we went to Fleetwood's tavern and got dinner, after dinner I went into Lewistown and fell in company with Captain Learmont a Pilot, and slept the same evening at Mr. Elliot's tavern. Sunday morning the 2d of September I set off to Fleetwood's tavern, which is about seven miles from Lewistown, and on my arrival I found my boy much worse, I procured two Doctors for him, they differed as to the disorder and likewise the mode of cure. Monday September the 3d, my apprentice continued worse the fever increasing, I nursed him night and day till Tuesday the 4th of September, when about 6 o'clock that same morning he died, after paying for a coffin and all the other expences; I asked Mr. Fleetwood what his bill would amount to, he brought me in debt six pounds, having but thirteen dollars and a half left, I told him I should want some ready cash, and not having enough to pay him I left him my watch and to pay him when he arrived in Philadelphia. About the 12th or 13th of the month, I was told by Samuel Edwards a Pilot, that a Bank was robbed, he was not certain as to what Bank, on Sunday about the 16th of the month Mr. Hunter and his wife came to Lewistown, we conversed about the robbery of the Bank, and the death of many of our acquaintances; the next day Mr. Hunter was setting at Mr. Elliot's tavern, he asked me to take a drink; when he renewed the story of the Bank robbery, he told me that many persons were taken up, mentioning their names, I asked him if one of the name of Samuel Robinson was taken up, he could not tell, he began a long circuitous story adding, that he was sorry there was so many innocent persons suspected, and said all the workmen that wrought at the Bank were suspected, I then asked him if I was suspected, he said yes, I asked his reason for not telling me sooner, he said he did not like to affront me, I told him I would go to Philadelphia, he strongly advised me, and next day I sailed with Captain West, and arrived in Brandywine on the 20th of September, and travelled on foot to Philadelphia.

5th. P. Lyon's second examination 21st of October before J. C. Stocker.

Lyon was then asked for his suspicions. Mr. Stocker got pen, ink and paper, and took down the following words, as near as can be recollected, viz.:

That on the Friday afternoon, or the day after the doors came to my shop, Robinson the carpenter, c[illegible] there with a stranger, they both examined the locks [illegible] closely; Robinson gave me strict orders to go on as quic[illegible] possible, I told him in the hearing of the stranger that [illegible] locks were not fit for a Bank. Robinson's answer was d[illegible] it, it will make a shift. I gave Robinson and his compa[illegible] something to drink, and they went towards Second-stree In about five or ten minutes after, Robinson's companio came back and went into the shop, while I was answering young woman at the door. Robinson's companion did nc stop one minute as he came out of the shop, I said to him I believe I must work all night, the Bank is in such a hurr for their work. Robinsons' companion answered, and saic he would see the Bank damn'd before he would kill himse for them; he then went towards Front-street. While I wa hanging the doors at the Bank, I saw this companion of Robinson's there but I could not tell what he was, I had never seen him 'till within those two days....Robinson's companion appeared tot me to be a clerk, (I suppose in the Land-office), as Carpenter's hall had been occupied by the Land-office, prior to the removal of the Bank of Pennsylvania....Robinson's companion seemed to me to be well acquainted with the whole of the Banking house. I afterwards, about the 20th or 22d of August, saw Robinson and his companion at Market-street ferry: just as I turn'd round from Market-street, they were both sitting at the front window, and I declare, I never saw two men so alarmed as they were at the sight of me, they stared and looked confused at one another; I saw they were alarmed at my appearance, therefore I did not go near them; but they observed I saw the confusion of their countenances. Robinson called me to the window.....they were drinking either porter or beer sangaree, but did not ask me to drink. Robinson says to me, Mr. Lyon what brought you this way, are you not afraid? the Yellow fever broke out here. I answered, what brought you this way, are you not afraid? Mr. Lyon, says Robinson, do you mean to go out of town? I do not know, says I.....Do you mean to go out of town? he answered, he did not know. Says Robinson, Mr. Lyon there is a bar wanting for a door of the Bank, mentioning what door; but I do not recollect what door it was he mentioned. His companion replied, Damn it there will be no occasion for that. I answered them, I was

ready for them at all times; I left them, and went to a peach boat and bought some peaches; carried them to my shop, and gave my apprentice some of them. I said to my apprentice, Jeamie I saw Robinson and that stranger, at Market-street ferry, that was in our shop while we were doing the iron doors: they seemed to be in deep study, and I do not think they are after any good.

MR. ALEXANDER. Sworn.

Sometime in January, 1804, I was at James Kerr's, John Haines was there, and Kerr asked Haines if he had seen Isaac Davis who robbed the Bank of Pennsylvania, Hains said yes, and said he went and told *Smith the Cashier* of it, and asked the Cashier if he would take Davis into custody, Smith the Cashier answered and said no, hang the fellow, I wish he would go off. I cannot tell what time John Haines had seen Davis.

JAMES KERR, sworn.

About 12 months back, Haines was at my house, he said he could lay his hands on Davis in two hours. I expressed a good deal of astonishment that he was not taken up. Innocence was punished and the guilty suffered to escape at large. I rather think he mentioned to me first that he had seen Davis; and when I mentioned to him my surprise, that he should be suffered to go at large, he said he had mentioned it to somebody in the Bank, but they gave it the go bye. Lyon heard of this conversation and requested me to get it repeated before a witness, which I did, and Mr. Alexander attended, and took a note or memorandum; the note was taken down a week after in my house. I was acquainted with Lyon before the robbery, I was recommended by Mr. Ingersol to employ him, and I always found him, a very worthy honest blunt spoken man. I have known him from 1794, he was an Industrious thriving man in his business his character suffered amazingly on account of his being taken up on a suspicion of robbing the Pennsylvania Bank, as it was known he had been working for that institution. His character continued to labor under a stigma, until the fact of the robbery was proved on Davis.

MARTIN RIZER, sworn.

My brother Joseph died, to-morrow will be four week he was a long time in a declining state, he was very poor when he took his oath. His disease was desperate, he sai he never expected to return from the country, shortly aft his deposition was taken. I have known Lyon since 179 He is an honest industrious thriving man; very much s He suffered afterwards in his constitution. John Gui thought him guilty, and several of his old acquaintanc looked black upon him but it is no wonder they looked bla on him on such a charge, and that by such men especially they had never heard of his examination. He carried o less business afterwards and had not so many Journeymen, as he used to employ before the attack made on him by the Bank, nor was he so much employed by others in his profession. He boarded with me a considerable time, I was obliged to give him credit near a year after he came out of prison before he was able to pay me.

Cross examined.

Q. How many men did he employ before this affair took place?

A. He employed four or five men, he has now only one or two, but I cannot say generally how many he has had since.

PHILLIP COLDWATER sworn.

I was a watchman at the Bank before it was robbed, I used to be in the Bank in the morning frequently to make fires by the break of day. The other porter died, but the porters, *Potter* and *Cunningham* used to go to Smith for the key turn about, often times Mr. Cunningham used to have the key over night. I asked Mr. Potter how Cunningham came to have it and not Potter, he said he is more trusted then me. This was the Vault key for the cash, where the books and things were kept in, I have seen him unlock the door and take out the books and the cash and boxes of dollars. I have helpt them to put it in the vault often in the evenings.

Cunningham boarded in Elbow Lane at Mr. Davis's, but he slep in the Bank.

ew him have the keys several nights, but not always.
Vault was upstairs on one side on the ground floor.
r was present when the money was put into the boxes
vault of an evening, but not always of a morning when
oney was taken out.
rs were two iron doors, to the vault.
night of the robbery Cunningham came to the Bank by
f between the hours of seven and eight o'clock in the
g, my partner and I was sitting together in front
Bank, he had the key of the front door with him.
slept in the Bank upstairs, generally. When Cun-
m came, he told us we could get extra duty to do, I
red, well if extra duty, extra pay, this was on Satur-
vening. He told us next Monday, you will have
nd at twelve in the day and continue till six in the
ng.
asked us if we could not furnish him with a light as
none in the Bank. We told him we had none but the
n the watch house, if that was of service he might have
lid not want it. He said yes, and asked if it would burn
ht, we told him it would, we gave him the Lamp, he
t into the Bank and locked the door, we saw nothing
of him till between ten and eleven on Sunday morning
he came to me and desired that I and John M'Aninch
come to the bank. He never borrowed our lamp before
ght; he told me I was wanted at the Bank immediately.
t to the Bank, there was Mr. Smith, I cannot say
vely whether Mr. Fox was there or not, but I think
best of my knowledge they were both there. They
oned me whether I had been away from the Bank
ne during the night. I told them I was not; he asked
er either of us were away? I said no. Then Fox said
ow you to let the Bank be robbed last night I answered
nothing to any body, I saw nothing, I heard nothing,
e hostlers who I thought drunk at Israels stable.

Court adjourned, P. M.

SAME WITNESS IN CONTINUATION.

partner was examined after me, then Mr. Smith told
to mention any of the circumstances to any one or
et it be known to our wives.

I was not asked about any thing which happened to Cunningham, so I do not know that I said any thing about him.

We were however asked if any body had been there the night before, I answered no. And as further proof we said our two dogs would not allow any body to go near the Bank.

They knew that Cunningham slept in the Bank and so I thought they did not think it worth their while to ask me any thing about him.

When the Bank was going to Germantown we went to it and Mr. Fox saw us. He told us to wait a little, but did not tell us why or for what, when we went to the alley he winked to John Fries, who went with us to the mayors At Mr. Hillary Bakers the same night we were examined. Mr. Baker made out our commitment and said no security could be taken either for myself or Partner, we talked a good while and said it was very hard we should be sent to jail as we thought that William Sansom and Samuel Coates would be our bail, we said it was no matter they would not take bail if it was only for the robbery of a shilling but in the end, the Mayor said we might go and call again upon him to-morrow, and then we went and took care of the Bank that night, as we had done before.

We also continued to watch the sickness through. We came to the Mayor's next morning, and he told us not to go out of the way, but nothing was said about bail, and we went to watch the Bank also that night, and so continued to watch all the time I mentioned before.

Mr M'Aninch told Mr. Smith, if he had been more careful of the keys, the Bank would not have been robbed. This was said in answer to Mr. Smith, who had said the Bank would not have been robbed, if we had watched as we ought to have done. To this he made no answer.

I was at the Bank when the money was brought back, it was in the morning.

I then threw my coat into the Bank and resigned.

A letter had been sent to the Bank by those who recommended us, and they ought to have reposed confidence in the character they gave us, and thereupon I told Mr. Fox, that if ever it was found out who robbed the Bank, it would be found to be those who were in the inside, and not those who watched on the outside. I told him so before I left the service of the Bank. Mr. Fox would not believe it, he said he *still thought we* were concerned. It was a few days before *the money was found* that he expressed this opinion.

Cunningham had always a candle in the Bank, and never 'till that night asked us for a light.

Before the robbery a good while, I found the door open a jar. I went to Cunningham, and asked him if the door had been locked, he said yes? I told him no, it was not so. I told the circumstance after the robbery, I believe to Mr. Bickham.

Q. What length of time was it before the robbery you found the door a jar?

A. It was not six months before the robbery....I remember Cunningham complained of sickness the next day after the robbery, from which he did not recover again.

Q. What time did you leave the Bank?

A. We left the Bank at 5 o'clock, the morning of the robbery; we went round the bank frequently, and walked from back to front. The dogs would not have barked much, unless from the noise of the hostlers at Israel's stables. We are generally set, one at the front, and the other at the back.

The Bank was not robbed in the night, but the afternoon, or morning after we left our stand.

Question. Where is Israel's Stable?

Answer. Behind Carpenter's Hall.) On the dogs barking we went back and saw nobody there.

Question. Had Cunningham all the keys of the Bank?

Answer. I did not see Cunningham have more than one key that night.

Question. Had he ever the key of the Cash Vault?

Answer. Yes, I know he had the keys, because I have seen him open the Vaults without going out of the Bank for the keys, to either the Cashier or Teller.

During the night of the robbery the Cellar door was fast, when we went back; we saw the lock upon it, when we went away in the morning.

We did not sit all night; but sometimes we walked about round the Bank as usual, and we never heard any noise but at Israel's stables during that night.

Question. Who kept the keys of the front door in common?

Answer. I believe the porters kept the keys of that door. and also of the inner door.

September 21, 1798, Lyon's commitment was read in Court, but no oath or affirmation against Lyon.

December 14, 1798, Lyon's recognizance before Wharton was read.

Mr. WILLIAM LACE, sworn.

I was first acquainted with Mr. Lyon, at the latter end the sickness of 1793, and our acquaintance has continu ever since. I always considered him as an honest and i dustrious man, and one whom I set a great deal of store l He was in a thriving way before this prosecution was co menced against him, and it was generally thought he w much injured by the supicions of Mr. Fox, and others of Pennsylvania Bank, who refused him their work, and w induced others not to employ him in their business.

There was a person who called at my shop, and who I foun afterwards was Haines, he asked me if I knew an ingenio man, as he wanted one to do an ingenious job; may be, th was the day after the robbery. I answered I knew sever such persons.

After which it came out, he wanted to know a lock-sm and asked me if I knew Lyon? I said yes, (this was the fir time of his coming) Lyon did jobs which required muc ingenuity. Haines came again some days after, I informe him, Lyon was at Lewis-town, I would write to him, if h was in a hurry. Lyon had taken his apprentice boy wit him, and could therefore do some work if worth while. told him how I knew he was gone to Lewis-town. He sai he was gone to Jersey. I said no. He proposed to go ther but I advised him to go to Lewis-town; if the job was wort while I would write. Afterwards I discovered that Haine was a constable, and that Lyon was suspected of robbery I told him, if he had stated his business, he might have ha Lyon in town by this time. I told him, I would do ever thing to detect him. He would not be satisfied he was gone but suspected I meant to lead him astray. I told him, if h empowered me, I would go and bring him. I told him th first, second and third time he called on me, that Lyon wa gone to Lewis-town. When Lyon parted with me, he ha partly concluded to go to Lewis-town. I gave Haines description of Lyon's person. Haines said that Lyon' name was Peter. I told him it was Patrick, and he woul see his name on the dial-plate of his watch. Lyon wen away about a week before the robbery. I told Haines th very day and hour he went away. I never saw Lyon afte until he was in close confinement.

I remember the second day after his confinement, I wen *to see him* in jail. I saw Rush there, and I asked him ar

the jailor to let me see Lyon, they objected at first, but afterwards it was agreed to let me see him.

I was taken with the yellow fever.

One day I sent him victuals in the morning; and in the evening after, I saw the provisions still in the room occupied by the jailor. I asked the jailor why it had not been given to Mr. Lyon; he said somebody had forgot it. I was refused admittance to see him repeatedly, between the hours of 10 and 4. I called every day I could, after I was well. The first time was, perhaps, a fortnight after I had got well.

I was not admitted on that day. They might have supposed I had had the yellow fever, and I was not inclined myself to go in. I generally went down there every day afafter, except the two or three last weeks while he was imprisioned. On an average, I was allowed to see him twice a week, and then was told, I was more indulged than any other. The last two or three weeks I was not allowed to see him without an order of the Inspectors. I produced an order from the Inspectors once. The inspectors had no objection. The affair of the food as I mentioned before happened several times.

Question. Did you know Helm?

Answer. I knew Helm.

I saw Lyon in the east wing, he looked miserable enough, much more emaciated than when he went for Lewis-town, and that I suppose arose from being so long in prison.

I have understood he was permitted to have a bed, in the latter part of the time, in which he was imprisoned. He had no bed when I first saw him there; he had only a blanket. He continued in that close confinement, 'till he was removed to the east wing.

During the time of Lyon's imprisonment, the yellow fever prevailed in the jail, and a great part of the confined died with that disease. He was kept by himself, close locked up.

The first time that I spoke to Helm, he let me see Lyon, but he did not speak to the Inspectors.

Several of the keepers died in jail during this season; it was at the time the jail was so deserted that Mr. Wharton took charge of it; he did not let me in to see Lyon.

After his discharge from jail, Lyon looked much worse for his confinement.

He had good work to do before he left Philadelphia. But his shop was shut up during the whole of his imprisonment.

Soon after my recovery, I took a letter from Lyon to Stocker.... Mrs. Stocker said he was gone to Gurney's. I went

and found him there; we had some conversation, as to Lyon. Stocker said that he had better apply to an attorney and get a habeas corpus. I asked him how it was to be done there was a great deal of talk. He mentioned Mr. Hallowell, and said he would speak to the directors at Germantown about it the next day. I saw Stocker the next day, and he told me the directors were determined to keep Lyon in jail.

The jailor had positive orders after, not to admit any person to see him.

After we had been to judge Shippen's, I asked Stocker if they were going to let Lyon out of jail. I don't know the day I asked this question, but he signified no; we had some little talk after, from which I found he had turned, for before this, he appeared to be friendly. The first word now was, we will keep him there, he has threatened to flog us, and certain other gentlemen of the Bank, we will contrive to keep him there as long as he will stick together. I met Haines, and he told me he had taken Lyon out to give the information he had promised. I asked him what the information was? He said damn him, he has been trifling with us.

I told Haines they ought to examine as to those two men (Robinson and the stranger, who has since turned out to be that Davis) they were both suspected by Lyon, and it might lead to a discovery, but Haines thought little of it.

I was at Judge Shippens, Mr. Fox was asked by Judge Shippen who those men where. Mr. Fox answered that Robinson was a person he respected and the other (not naming him) was an amiable youg man*. I do not recollect that any one but Mr. Fox was examined there. Mr. Fox stated in this Court that amiable young man was Mr. Isaac Davis. Both Mr. Fox and Mr. Rawle spoke on behalf of high bail and required it on the part of Lyon.

I was out of the room a few minutes so that I cannot be certain of all that past.

Mr. Fox and Mr. Rawle opposed Lyon's discharge I was in the supreme Court when Lyon was brought up and the bail lowered by the Chief Justice, I think Mr. Fox Mr.

* That young man was the friend and companion of the Cashier of the Bank and the Carpenter Robinson.

Ingersol and Mr. Jonathan Smith were present I cant say positively whether it was Smith or Stocker who swore his life against Lyon.

There was nice ingenious language employed to hold Lyon to bail and an affidavit was exhibited of Wheelers respecting the locks he had examined and which I believe to be very erronious.

Cross Examined.

Q. Did Stocker ask you who would be his bail?

A. After Lyon telling me that Traquire and Hamilton would be his bail for 6000 dollars, or as much as was required. I do not recollect either of them saying they would go his bail. But I waited on Traquire, Hamilton and Dobson, and not one would step forward. Stocker then told me to take Lyon before Judge Shippen who resided on the West side of the Ridge Road.

He also mentioned Judge M'Kean but I replied as that Judge and I, had had a misunderstanding I could not act for Lyon before him as I thought it would injure Lyon, but I concluded to go to judge Cox. Stocker said that it would not do for I must go before one of the Judges of the Supreme court.

Q. Did not Stocker say he would do any thing consistent with his duty.

A He was friendly and said something in substance like that.

I had three conversations with Stocker, first at Gurney, or Smith second at Germantown the third at Whartoni office in this building.

Wharton was present at the last, but he went out. And during his absence, Mr. Stocker and I talked and it was then he said, he would keep Lyon in prison as long as he would hang together. I went out as Mr. Wharton returned.

I went away leaving Mr. Stocker behind.

Q. Do you recollect Stocker purchased a chair of you?

A. Yes.

Q. When was it?

A. The purchase of the chair by Stocker from me happened better than a year before Lyon was put in prison..... Mr. Stocker at the time of purchasing the chair asked me if I knew Lyon. I answered yes.

Q. do you not recollect that Lyon corrected Mr. Fox on his oath at J. Shippens. There was some conversation at

Judge Shippens about the locks that Mr. Fox acknowledged he was mistaken in, but I don't know what were the particulars. I dont recollect by whom another subject was introduced, or to whom delivered, but, it seems to me that it was something said of the information given by Lyon as to the man that he suspected at Market Street Ferry.

THOMAS CAVE SWORN.

The Thursday after the robbery, I was going to West Chester, and met Jonathan Smith on the road, I had formerly been watchman at the Bank.....he told me the bank had been robbed. I asked him who did it? He answered no body but Patrick Lyon. It was certainly him, and no other person. He said Lyon had the doors and locks in his possession some time before the robbery. I answered that I remember at the old Bank, the door and window was found open, and I told Mifflin of it, when he was cashier.

I also told Smith that it was on the Thursday before the robbery that Lyon said he was going to Cape Henlopen, I said he would come back, if he heard he was suspected. Smith told me he would reward me for taking Lyon, he would give me 2000 dollars. As to his character, I said it is good, he is a thriving and industrious man.

TIMOTHY BINGHAM SWORN.

The first time I saw Lyon, was after the robbery, going to Lebanon tavern, and he came in and stopped for the night. The next morning he said, he would go to some justice whom he heard had issued a warrant against him, and accordingly he went. This testimony was objected to by the Defendants counsel.

JACOB EVANS, sworn.

At the time Lyon was arrested, I stopped at my father-in-law's door W. Helm, Haines was there, Mr. Blame Mr. Helm, and Peter Field.....Haines said Lyon was arrested, and that he was sure he was the man, and such was the general opinion of the Bank, I then said, it will be a good job for you, if it is so, for 2000 dollars reward is a good job for a days work, Haines replied, if he did it, he might depend on being punished.

MRS. PENDERGRASS, sworn.

I am acquainted with Mr. Smith, I have lived in the family. Isaac Davis sometimes worked there, and came to the house, at other times, I have seen him often there. Ordered to withdraw.

JOHN CORNECK sworn.

Cunningham one night lodged at my house before the Bank was robbed,....I lighted him to bed, I saw a large key which he tied with a garter round his neck. He belonged to the Bank of Pennsylvania at that time. I cannot recollect how long it was before the robbery: but it was in the course of that summer. It was a large key, larger than our common door-keys.

Court Adjourned.

Saturday 14th December 1805.

MR. RAWLE for the Defendant.

The words of the declaration on the record charges the plaintiff falsely and without probable cause did, &c. But it will be shewn that the defendant acted for the interest of civil society. And the plaintiff must prove a total absence of probable cause and that the defendent have been instigated by express malice. It was an important and imperious duty imposed upon the defendent who were intrusted, in perilous times, with great property, and founded on correct principles there were others as well as Lyon to be considered, principle and duty and not rancour and malice, were the only motives that influenced the defendants.

On the 3d of March 1793, the Bank of Pennsylvania was incorporated. Six directors were to be chosen on behalf of the state and the first one appointed by the Senate was Mr. Fox who was made President. In August 1798 the fever made its appearance in Philadelphia and on the 11th, the books of that Bank were removed to Carpenters-hall, where the United States Bank had been formerly kept, they were to be deposited in the vaults used of the Bank of the United States, but the doors were not the same, Mr. Stocker had known Mr. Lyon and thought favourably of him & had employed him on important work for himself, he

recommended him to the Bank in consequence, the doors were sent from Lodge Alley by Robinson to Lyon to be fitted for Cash Vaults in Carpenters-hall. This was on Thursday. The Bank directors were desirous that they should be returned soon. Robinson went several times to Lyon's shop to get the work expedited but contrary to their wishes the doors was detained all Friday and not put up till Saturday afternoon, the third day they had been in his possession. The locks put on, were new locks, The best in the City they had been examined, and approved by Lyon, who said they were Patent, which no man could pick. On Saturday the Bank began its operations. Two watchmen were employed on the outside and two Porters who lodged in the Banking house, were engaged for its security. The Cashier was Smith, J. Hughes first Teller. The necessary number of clerks were engaged, of whom Annesley only survives.

The vaults were not up stairs nor in the cellars but on the first floor with brick walls and with double doors and double locks and keys.

There is a book vault to preserve the books from fire more than from theft, the keys of which were left in the drawer,

The money vault is a distinct appartment. The money is never lodged in the book vault nor the books in the money vault. From 1793 till 1796, the first Teller kept the keys, but Mr. Hughes being sickly it devolved upon Mr. Smith. It was then thought better to divide the keys.

They were constantly so kept until Mr. Hughes was unable to attend.

On the day when the robbery happened Mr. Smith, was obliged to act as chief Teller in his place. Mr. Annesley acted as Notary out, and as clerk in the Bank. On the night of the robbery Mr. Smith delivered one of the keys to Annesley and retained the other.

The keys were kept, in that way, that night. In no instance, even for an hour was the key of the money vault intrusted to the porter. The Teller puts the notes and the money received in the course of the day into the money vault. When the Bank was closed on Saturday Messrs. Fox the president and Smith the cashier went out of town, and Mr. Annesley remained in town with one of the keys the other was with Mr. Smith, so that the door could not be opened unless one of them had lent his key to the other. On *Sunday* about 6 o'clock Mr. Annesley went to get blanks

to fill up for protest. The Watchmen were gone. The front door was fast, but going round to the back door he found it opened, and on entering he perceived that the money vault was open also. He then went round to the front to call Cunningham who on hearing him, came down almost frantic. Mr. Annesley then went to find Mr. Smith (according to directions which he received from Mr. Cunningham) on foot—but Cunningham having misguidted him, he was gone a considerable time before he found him, and Mr. Smith sent his brother-in-law to Mr. Fox to apprise him of what had happened, they both returned after a lapse of several hours. The next day Cunningham had symptoms of the yellow fever.

Now it is our duty to lay before you a reasonable and probable ground of suspicion.

Cunningham could not do it though in the inside of the Bank without force or false keys. Suspicions therefore fell on Mr. Lyon.

A warrant was procured from Samuel Jennings, esq. but, as Mr. Fox could not get a Constable, Annesley and Cunningham were dispatched after Lyon: but they could get no information as to the place where he was to be found. Annesley and Charles Jolley watched that night in the Bank. In Jolley's mind the same suspicions were entertained of Lyon's guilt, indeed it was generally supposed that he was the perpetrator of the robbery.

Annesley overheard three strangers talk about the robbery of the Bank: from which conversation he understood that Lyon had been seen in Philadelphia on Sunday morning.

A meeting of the Directors was called and the particulars of the loss, and steps taken in consequence were communicated to them; and on the representation of the President a reward of one thousand dollars was offered by the governor's proclamation. Enquiries were directed to be made after Mr. Lyon who had been employed in fitting the iron doors of the cash vault, and without whose privity it was believed this robbery could not have been committed.

On the 5th September, two days after the governor's proclamation Squire Baker issued a general warrant; and on the 21st of the same month, before any certain intelligence could be obtained where Mr. Lyon was, Mr. Stocker was unexpectedly accosted by him in the lane leading to his house, he told Mr. Stocker, that he had came from Wilmington, for the purpose of meeting the charge that had been

made against him of robbing the Bank of Pennsylvania; and had been waiting some time for him at his house. Mr. Lyon did not return to Mr. Stockers; but promised to return thither next morning, on which they parted. Next day Lyon came, according to his appointment, and Messrs. Fox and Smith were sent for to attend his examination. Mr. Wharton who was at that time a very active and vigilant magistrate was there also.

Mr. Lyon gave a minute account of all his proceedings from the time he left Philadelphia till his return. This minuteness and particularity appeared very remarkable and extraordinary to Messrs. Wharton, Stocker, and Fox. Upon his being told that they could prove it against him, he immediately became confused and called for a glass of water; for that he was almost fainting. Mr. Wharton then supposing that he was about to disclose the whole affair, said, if you discharge him you would do wrong, you ought certainly to commit him.

A commitment was made out, and so Mr. Lyon could not obtain bail to the amount required. Mr. Stocker could do no other than commit him to the Philadelphia jail. This took place on the 21st September. Mr. Lyon had an appartment to himself, and made no complaints to Mr. Helm, who was at that time the jailer, and a very humane man. The exclusion pointed out by law, was not adhered to in the case of Lyon.

It is true that Davis charged Cunningham only: but though Cunningham could let him into the Bank, he could not open the door of the cash vault, without a false key as, therefore, there still remained a suspicion against Lyon; to have withdrawn the prosecution would have been inconsistent.

Mr. Lyon was afterwards brought before the supreme court, by *habeas corpus*....This court, to whom no malice can be imputed; and heard by his counsel on which the bail was reduced from 6000 to 2000 dollars.

Thomas Annesley, affirmed.

In 1793, at the commencement of the Bank of Pennsylvania I was runner; but in 1798 I was employed in the house as first Teller. In Carpenters-hall there are two vaults on the north east side. The most easterly was used to put the cash in, and the other to contain the books. Each vault had

double iron doors, with locks on each, of different construction. The key of one would not open the other.

Q. Who kept the keys ?

A. While the Bank was in Lodge Alley I cant say who kept them, but in the other Bank the Teller kept them. Mr. Hughes the chief Teller was sick at the time of the robbery.

On the Saturday preceeding the robbery, about 4 o'clock in the afternoon, the Cashier brought me one of the keys, and put the other in his pocket. I took the key home and it was never out of my possession. I never knew either of those keys to be given to a porter. It would be contrary to the custom of the Bank. No money was ever put into the book-vault, nor books into the cash-vault to my knowledge. I believe a person could not get into the cash-vault without having both keys ; nor into the cash-vault from the book-vault.

Mr. Clement Biddle being out of town I acted as notary to the Bank for him, on the day before the robbery I had twenty two notes to protest which took me a considerable time, I was in such a hurry that I forgot and left some forms of protests in the Bank, so I concluded to go next morning early to get them. In the morning of Sunday I accordingly went at 6 o'clock to the Bank and found the front door fast ; and then went round to the back door which I found a jar. I pushed it open and looked in, and found the cash-vault open. I immediately ran round to the front door and rapped hard, and Cunningham put his head out of the window.

I told him to come down and see what condition the Bank was in. He came down, and unlocked the front and also the inner door and we went in together, we saw the vault door open, he tore his hair, and said he would be suspected, he appeared mad or insane. He was exceedingly agitated. We went into the vault and found the Teller's Box was perfectly empty. He seemed very anxious that the Cashier should be found. I said I did not know where to get him. He directed me to his place two miles on the turnpike road. I had no suspicion of him or any body else. I left him and went over Schuylkill for the Cashier. He had given me a wrong direction : instead of the turnpike, it was on the West-Chester road, where I at last found Mr. Smith and came with him to the City. The Cashier sent his brother-in-law for Mr. Fox. The Cashier examined the vault and found a deficiency of

164,000 dollars Mr. Fox and Cunningham were gone for some time and they returned, I saw a paper in his (Cunninghams) hand which he told me was a warrant for Patrick Lyon and that he was deputed to serve it. He asked me where Lyon lived or where his shop was, and required me to go with him and shew him the way as he did not know where he lived.

I went with Cunningham to Lyon's shop, but it was shut, and a man told us he had not been there for two weeks.

We then went to his house,...he was not there; and there was a cobweb to be seen in the key-hole of the door. We returned to the Bank. The President and cashier requested us to get some young men to sleep in the Bank that night. I went there myself at seven or eight o'clock in evening and knocked at the door. When the porter opened it, I saw Cunningham with half a dozen Pistols on the Table and candles burning. I asked him what all this was for? He said, it is in case they should come, I shall be prepared for them. Charles Jolley and some other man came about 11 o'Clock at night. I had left the key of the cash-vault at my own house. Cunningham said he felt poorly and could not sleep and died about five days afterwards.

I never examined the bolt of the lock to see how it was situated, nor did I see the door locked the evening before the robbery.

Mr. Rawle Qestioned. We propose to shew general rumor to obviate particular malice.

Mr. Annesley heard three men speaking about the Bank. What they said we will give in evidence.

Mr. Dallas stated three objections against admitting this money.

MR. INGERSOL,

Admitted the suspicion entertained against Lyon was a mistake.

JUDGE YATES.

But it is evidence to repel malice that is offered not to establish the fact.

THOMAS ANNESLEY CONTINUED.

I heard three persons in conversation on Monday morning before breakfast two days after the robbery. One of them

was just mentioning that he had seen Pat Lyon the day before in the City. I looked at the man and asked him if he was sure he was correct? He said he knew Pat Lyon as well as any man, and that he had seen him. I asked him his name. He told me it was John Boyd a bricklayer and lived in Southwark. I communicated this to the president of the Bank between 9 and 10 o'clock.

Sometime after we removed to Germantown the president directed me to look for John Boyd at West-chester. It was not the same Boyd who lived there. I did not ask after him in Southwark. It was not the same man who pointed my kitchen.

Q. As you are well acquainted with Jonathan Smith. Did you ever hear him swear or make use of any imprecation?

A. I have long known Jonathan Smith, I have seen him pleased and angry; but never heard him utter an oath or imprecation or any thing like it.

The leading question was asked, and Annesley answered; cross examined. There was no lock to the back door of the Bank, It was fastened by an iron bar and latch on the inside, there was no fastening on the outside at all, It had the appearance to have been opened on the inside. There was an inner door between the foot of the stairs and the banking room. There was a lock to this inner door. Cunningham opened it; but I cant say whether he unlocked it or not; there was nobody there but Cunningham and me. He had access to both the keys of the outer and inner doors. I cant tell whether my key was the key of the outer or inner door; nor who locked the cash-vault that night.

Q. Who locked the cash-vault doors the evening before that?

A. I do not know who locked them.

Q. How long is it since your kitchen was pointed?

A. It is three or four years since. I did not tell Mr. Fox any thing about pointing the kitchen. I did not mention it to any body.

Q. When did you go to West-Chester after Boyd?

A. Perhaps about two weeks after the robbery,

Q. Did you inquire after the other two men?

A. I did not.

Q. Did you mention your business at West-Chester to any person?

A. I did not say a word about it.

Q. Where did you leave the key of the cash-vault on the night of the robbery?

A. I left it hanging up in the parlour and returned it to Mr. Smith in the after part of the next day.

Q. Whose business is it to carry the money into the cash vault?

A. It is usual for the porter to carry the money to its place in the vault: but the Tellers carry the book of notes.

Q. Was there any light burning in the morning after the robbery when you went to the Bank?

A. I saw no light. I believe the boxes of candles were not exhausted for we had plenty next day.

Court Adjourned.

Eadem die P. M.

WM. SANFORD, sworn.

I went into the bank in January 1796, and continued there ever since, during that period we have had two vaults, one for cash, the other for the books, each vault has two iron doors; and each door a lock. None of the keys will open more than one lock. When I went into the Bank, Mr. Hughes was first teller. He was taken sick: but I cant tell how long he remained so; during that period Mr. D——, acted as first teller. He had the care of both the keys, of both the doors of the cash vault. The reason I knew it, is, that I was engaged in circulating notices. I received a bundle from the cashier. In the course of a few months I was brought into the banking room. I speak generally. In December 1796, when John Barclay left the Bank, I was put to the books. At Christmas in the same year, Mr. Smith was appointed cashier, and he demanded of Mr. Hughes one of the keys of the cash vault. His reasons were, the safety of the institution, and I believe this arrangement to the best of my knowledge has continued ever since. I never knew the porters to be in possession of the keys of the cash vaults, nor of any cash being deposited in the book vault. I was at the bank on the day of the robbery, and remained there tell three o'clock when the bank closed. It was the business of the teller and cashier to see the vaults closed.

Q. Was you not sick at that time?

A. I was not taken so sick, as not to be able to attend, till the Monday the robbery was committed.

Q. Did you ever hear Mr. Smith swear?

A. Mr. Smith never swears.

Cross examined.

At the time when I left the Bank the vaults were not shut when I went away. It did not come within my department to see money either deposited or taken out. I generally went home to dinner; and frequently came afterwards. I used to post the days transactions, confined myself to my own department or walked about the Bank and observed what others were doing....and assisted the Teller to balance his account whenever I was asked.

MORDECAI CHURCHMAN, AFFIRMED.

I went to the Bank of Pennsylvania after the fever of 1797 and was a clerk, and have seen the Cashier and Teller have access to the cash-vault, but not so often in the day as at locking up at night. I have seen the Cashier and the first Teller open the vault; but never any other person unless one of them were present. I was at Carpenters-hall when P. Lyon was there, and the doors were removed; but I dont know from whence they came. He was fitting them to the cash-vault. I took up the locks and on turning the keys I found they worked very easily, as if there were springs in them I asked him what kind of locks they were. He said they were patent spring and tumblerlocks, which no man in America could pick. The delay in the fixing up of the work was owing to the conduct of the men who assisted. I left him there with them.

Q. Do you know Jonathan Smith; and did you ever hear him swear?

A. I have known Mr. Smith from February 1797, and have been daily with him I never heard him swear or use harsh language.

Cross Examined.

Q. Did you tell Lyon which was to be the cash-vault?

A. I never told Mr. Lyon which was to be the cash or which the book vault. I know nothing, how the money was deposited or taken out of the cash-vault in the morning or evening before the robbery.

SAMUEL ROBINSON, SWORN.

The two doors were made by Lyon in 1797. I was ordered, on removal of the Bank, to take them to Lyon's shop. This was on the 9th of August 1798 Thursday afternoon. I went the same evening. We had a conversation about the doors not fitting in point of the hooks. He accordingly punched them off. I went to the old Bank and got a strip to take measure so that the hooks might fit the eyes which were built in the old wall. The business was urgent and I told him so. He said he would do it as quick as possible, we took the demensions of the hinges. I went down to the Bank, and he went home. The next day I went to Lyon's. Perhaps it was in the afternoon, Isaac Davis went along with me. Lyon had not got so far as I expected. I told him if he expected to do the work of the Bank he must be more punctual. I believe he said, he did not care whether he did the Bank work or not. He was then at work at the doors. The next day, Saturday, I went down again, I believe in the forenoon, but I do not know whether Isaac Davis went with me or not. Davis being about the Bank every day he offered his service. I recollect a conversation between Lyon and Davis : I dont know about what, but they did not appear to be acquainted. The locks were, at that time, at Mr. Lyon's. In the afternoon of Saturday the doors came up, so early that one or both were fixed up that afternoon. The locks I took to Pat Lyon, were those purchased for the book vault up stairs in Lodge Alley.

Nothing was to be done to the locks, but to change them. I do not know of any necessity to take them to pieces, neither do I know that they were taken to pieces.

I did not know that Pat Lyon had the keys till he came up to the Bank.

I said to the Cashier that, unless Lyon would go on quicker, he would not get on the doors till the end of next week.

I dont know that there were any thing said of those doors that could lead Lyon to the knowledge of those doors being to be put to the cash-vault.

Cross Examined.

Q. Did not Lyon bring up the doors to the Bank in order to suit the bolts of the locks to the steples built in the *wall ?*

A. I do not know whether he did or not.

Q. Did he drill and cut the key holes at the Bank ?

A. I do not know. Davis had nothing to do at the Bank. He never struck a stroke. He went with me to Lyon's shop once, & Davis & I were drinking together every day. The other doors wanted some alteration but I dont know whether they wanted so much as those which Mr. Lyon had to do.

Q. Did Mr. Lyon do any other work for the Bank ?

A. He made a lamp iron at the same time. I saw one or two or three other lamp irons with him at the time, perhaps they were also for the Bank.

The other doors were sent to Owen on Saturday in the morning, and he brought them back, I believe on the morning of Monday. They worked on Sunday there. Owen was forced to do it immediately. His orders were the same as Lyon's. The thing was urgent, it would have required a day to do the work if they had nothing else to do. I think I could have cut them out myself and put them on in that time.

Q. Did you ever do such work ?

A. I never did such a thing in my life.

Q. Did you ever hear Mr. Lyon say the locks were insufficient ?

A. Lyon made complaint to me that the locks were not good enough, in the year 1796 or '97 one of the two. He said they were not the right kind for iron doors ; and showed me some wards one of them he called a patent lock : the other was an old lock off the front door of the Bank and put on the book-vault door. The same old lock was put on the iron door of the cash-vault at Carpentershall. On the 14th of August we finished our work at the Bank my family was out of town.

Lyon met Isaac Davis and me on Mark-tstreet wharf we stopt him in fact, and we had some conversation.

Q. Did you ever say that Lyon drilled the key holes at the Bank and that he did double the work in the same time that Owen did ?

A. I do not know whether I have ever said Patrick Lyon drilled the key holes at the Bank, or that Lyon had done double the work as Owen.

Q. Was it in '96 or '97 that Patrick Lyon found fault with the locks ?

A. I cant recollect which, but it is probable that he found fault with them in 1798.

I asked Mr. Lyon on the wharf, whether he was going out of town, but I dont recollect his answer.

Q. Did you know which of the two vaults was to be the cash-vault ?

A. I did know for which vault the doors were intended but I did not know where the money was to be deposited, knew nothing about it.

Q. What did Lyon say to Davis ?

A. Lyon said to Davis : how do you do, and nothing more. I heard all passed, and they did not appear to be acquainted.

ROBERT WHARTON, AFFIRMED.

In September 1798 I stopped at Mr. Stockers, and was told that a man who was suspected of robbing the Pennsylvania Bank was to be there. Mr. Stocker went off on horseback, and shortly after Lyon came into the front parlor, when Mr. Stocker returned he brought Messrs. Fox and Smith with him, the examination was opened but my memory is so treacherous and please the court that I cannot remember all that passed. Lyon gave a history where he had been, but he told such a straight and well connected story that I was sure he was guilty.

A question was put by Mr. Smith what it was I dont recollect but Lyon immediately turned pale and trimbled & sk d for some water. Mr. Stocker ordered some wine and water.

I dont say whether it was through fear or surprise Mr. Stocker asked me my opinion tho, Mr. Lyon was present. I cant say whether he heard what passed. The import of what I said in answer to Mr. Stocker was: The importance of his examaintion and the embarrassed situation he appears in, would, if I were the magistrate induce me to commit him. I believe Mr. Stocker then committed him.

Patrick Lyon was extremely minute in his narrative as I have mentioned before, and this formed, in my opinion the ground of my advice for I was convinced that he had been concerned

I removed my family out of the city in August 1798 I put them into my carriage and drove my carriage myself to Darby, and I took my family out of my carriage and left them in the country, and I drove my carriage up to town again myself, but my memory is so short and so treacherous and the thing happened so long ago I cannot recollect all

I was an Alderman and one of the Inspectors of the prison. Perhaps the whole of the Inspectors had left town. I removed to jail for several weeks ; and took upon myself the care of it. Peter Smith was the principal keeper then, Mr. Helm was not there till after, Lyon was put into the store room and kept by himself. I never knew that he was used with severity he was only excluded from intercourse with persons outside.

I believe for sometime he had no person to visit him. I visited him myself occasionally and tried many schemes to extort a confession from him but I never could get any thing out of him. He may have made a complaint for not being permitted to see his friends but for no other cause. Philip Edward was the keeper under me. Lyon came before Helm several weeks.

Q. Does Mr. Smith ever swear?

A. Mr. Smith never swears. I never saw him angry.

I had a minor hand in securing Davis and obtaining from him a considerable some of money.

I was informed of the offer made by the Bank, not to prosecute, if he would disclose.

This was the night when he disclosed and we obtained about 150,000 dollars, part of the plundered property. I cannot tell exactly what sum.

I cant tell whether it is two, three or four years since Mr. Smith mentioned to me that Davis was in town and asked my opinion of the propriety of taking Davis in order to try him for the felony.

I believe my answer was, you have made Davis a promise not to prosecute him, provided he would disclose where the stolen property was, you could not act asmen of honor to prosecute him. They told me, they had made a *solemn promise* not to prosecute, on that condition. I said, men of honor would not prosectue to recover the paltry sum of two or three thousand dollars.

On the 14 of December 1798, recognizance was entered before me, and Lyon was bound to keep the peace particularly to Jonathan Smith Cashier of the Bank of Pennsylvania.

These proceedings were read from Mr. Wharton's docket.

Q. Do you know Mr Lace?

A. I know Mr. Lace but I dont recollect his being in the mayors office up stairs....I rather think I saw Mr. Stocker but I cant recollect.

Cross examined.

The bail demanded by Mr. Stocker was a large sum, but I cannot tell the amount; but it did not appear to me to be too large for the sum stolen. The bail had relation to the amount stolen.

I believe I recollect something of a declaration made at Mr. Stockers that they could prove Lyon was in Philadelphia on the Sunday. It was after something was said by Mr. Smith that he turned pale.

I left the house before he was committed.

I strove several times while he was in confinement to get him to confess, but without effect.

I was taken ill in the jail of the yellow fever, and went home for three days only.

Now Gentlemen I will tell you how I cured the yellow fever. I got a convict to bleed me and I soaked my feet up to my knees in warm water, then I took two doses of castor oil and when I recovered I took a walk to the Hospital, and I saw Doctor Rush, and I told him what I had done, and he highly approved of my mode of cure. I was extremely weak (I took a sweat.) I got into my carriage and took a ride when I got out of my carriage on my return home I found myself much better.

Q. What kind of provision have the prisoners in jail?

A. Very good beef and soup, I lived upon it myself and I would not wish to live better.

Q. Is not that provision withheld until a person is found guilty?

A. Beef is withheld from prisoners in for trial.

Q. Did Lyon get his fare of such provision while he was confined?

A. I cant tell whether he got his fare, but I suppose he did.

Q. By Mr. Lewis, did you want for any thing there?

A. Nothing but wine and segars. (Here was a loud laugh by the audience.)

Q. Mr. Lyon was put in the east wing, what was that for?

A. He was not placed there for his accomodation but for the purpose of obtaining a disclosure.

Q. What kind of prisoners are confined in the East wing?

A. Theives and Vagrants.

Q. By Hopkinson, Is it a cleanly wholesome place?

A. Indeed Mr. Hopkinson, if you was there, you would be lousy in a quarter of an hour, (a loud laugh.)

Q. Was there any charge on oath or affirmation before Mr. Stocker against Mr. Lyon or any confession on his part?

A. No there was no oath or affirmation or confession.

Q. Who had the administration of the jail at that time?

A. I had myself.

Q. Was the yellow fever prevalent in the prison at that time?

A. There were several cases and some deaths.

Q. Do you recollect any thing of Cunningham's name being mentioned in the examination before Stocker?

A. I can not remember any thing of Cunningham the porter being mentioned at that time.

Q. Did any person charge Lyon with making the locks?

A. I cannot recollect any thing of the locks, or who they were made by.

Q. How long was you at Stockers when Lyon was examined?

A. I was not above a quarter of an hour or twenty minutes at farthest.

Q. Where did Mr. Stocker go when he left Lyon and you at his house?

A. I believe to Germantown.

Q. Who kept the key of Lyon's room while he was confined in the West end?

A. I cannot tell.

Q. Suppose the key was not hung up among the rest of the keys of the prison in what manner could any one give Lyon his provision?

A. Why, through the bars to be sure.

Q. How wide were the bars apart in this solitary room of Lyon?

A. I suppose about eight inches by ten.

Q. Do you think they are one inch apart, could you get your hand edge ways through them?

A. I could push my head through the bars.

Q. By Mr. Condy, Mr. Wharton I wish you to recollect this is a very important point, are you sure the bars is so wide as you swear to Mr. Wharton?

A. I am perfectly sure gentlemen, I conversed many a time with Lyon when he was in that same room. Mr. Hopkinson said be sure Mr. Wharton. Mr. Wharton replied with a smile I am perfectly sure Gentlemen. Mr. Hopkin-

son in a low tone of voice says, Lyon you must be mistaken, respecting the bars.

Lyon answered, I am not mistaken, I suffered too much in that room ever to forget. Mr. Hopkinson, is there no person in court that can inform us? Lyon, yes sir, there is the keeper but he is at such a distance and the court is so crowded I do not think he can come forward.

MR. RAWLE,

Read the writ of *Habeas Corpus* that brought Lyon before Judge Shippen.

JOHN HALOWELL *affirmed.*

At the request of Mr. Lace I attended before Judge Shippen as counsel for P. Lyon. Mr. Fox and Mr. Rawle appeared, M. Lyon, Helm, Lace and myself.

I objected first, That he had not been charged on oath. The Judge advised me not to insist upon that exception: as, even if it were well founded, he would give time to the prosecutors to procure a legal commitment. I waved the exception and went into the merits.

Mr. Fox then affirmed, and entered into the detail. He said that the doors of the vault had been in Patrick Lyon's hands a considerable time, rather longer than what was right. The officers of the Bank had urged him to dispatch. He then detailed what passed before Mr. Stocker concerning Mr. Lyon being agitated, this was before any of the money had been discovered. Mr. Fox, said, the Bank depended on him.

There was no evidence for Mr. Lyon except Lace, as to his character.

I did not ask the judge to discharge him altogether: but to lower the bail: I thought it would be fruitless to insist on more at the time.

I think I do recollect something stated about a conversation Mr. Lyon had with two persons on Market-street wharf, they were carpenters.

After the money was found, I waited on Mr. Fox, and told him it was hard that Lyon should be confined. Mr. Fox in reply said, that he would consult the directors, for *his own part*, he wished every thing to be done, consistent

with justice. When I saw him afterwards, he said that the directors were determined that the law should take its course.

I did not consult Lyon, as to his being discharged altogether. Lyon was dissatisfied with that part of my conduct.

CALEB LOWNES, Affirmed.

Being examined, concerning the accommodation Mr. Lyon had in jail, said, he heard no complaint, I was never in Lyon's room....I never interfered with the untried prisoners. The general policy of the prison, is to encourage the prisoners to read, there are plenty of books in the prison.

ISRAEL WHEELAN, Affirmed.

I knew Jonathan Smith from his infancy, he does not swear.

Q. by Mr. Condie. Did you ever here any of the family swear ?

A. No.

Q. Did you ever here any of the neighbours swear ?

A. No.

JOHN WILSON, Affirmed,

To the same point, that Smith does not swear.

Court adjourned, 16th December, 1805, P. M.

MR. RAWLE,

Offered as evidence, the examinations that were made before 'Squire Baker.

MR. DALLAS.

This does not appear to come within the rules laid down by the court. The former case was that of a person unknown to the officers of the Bank who had said, that Patrick Lyon was seen in Philadelphia on Sunday. The evidence now offered is the declaration of a person, brought before a magistrate, by the defendants themselves. This took place on the 4th of September; and the robbery was committed on the night of the first of that month. If the officers of that institution can call in watchmen and others who are in their employment, and under their protection, to

give evidence in their behalf in a court of justice, true, false, it will be in their power to give an improper colori to the facts, and that being the case they may thereby preve any prosecution of the kind being instituted, it is said to be some ones hand writing, but it is neither certified nor sworn

Here is an offer of a paper said to be reduced to form Mr. Baker, what of it. Has not Coldwater been examine Is not Fries in town? Be that as it may, they certai within the reach of the jurisdiction of this court, a subpœ can bring them here. The jury will have an opportunity seeing them, and the counsel, that of cross examining.

Judge Yates. So far as respects the living witness yc opinion is correct.

Mr. Hopkinson. We were prepared to show (but yc honor will recollect that they would not permit us when c leading witnesses came forward,) circumstances of extrei cruelty.

Judge Yates. The great point gentlemen that you : considering, is whether there ist probable cause, into that must examine.

Judge Brackenridge. I do not say what the pr would amount to, was it admitted.

Mr. Hopkinson. We w[illegible]ption they may r it. Let them read their pa[illegible]

Judge Yates. But they [illegible]t prove it by a living w ness.

Mr. Lewis. We shall file exceptions if we are not permit to proceed in our course,

Mr. Hopkinson. There your honors!! They are alr dy afraid of the jury. They threaten to harass us with a ther trial. Not a word can they say of Lyon, but it bri them into terror. They anticipate!!

Mr. Ingersol. It is not worth spending our time in tercation. It may be read.

Mr. Rawle, read a paper. It was a warrant from ald man Baker dated 5, of September 1798. And 12 of Septe ber John Haines's search warrant to search Cunningha lodgings whom the Bank suspected had been concerned the robbery; also the following proclamation :

PENNSYLVANIA, ss.

In the Name and by the Authority of the Commonwealth of Pennsylvania

By THOMAS MIFFLIN,
Governor of the said Commonwealth,

A PROCLAMATION.

WHEREAS, it has been stated to me by the president and directors of the Bank of Pennsylvania. That on the night of Saturday the first instant, the house now occupied by the said Bank, commonly called Carpenter's-hall, was burglariously entered by some Villain or Villains, unknown, and therefrom a considerable number of BANK NOTES of various discription and denominations were stolen and carried away: To the intent that the Perpetrator or Perpetrators of so great a crime, and the accessaries thereto, may be discovered and brought to condign punishment, I have deemed it expedient to issue this Proclamation hereby offering and promising a REWARD OF ONE THOUSAND DOLLARS, to any person or persons, who shall discover the Perpetrator or Perpetrators of the said crime, or any of them, or any accessary thereto, before or after the fact, to be paid on the conviction of all or any of the offenders. And I do hereby further offer and promise a FREE AND ENTIRE PARDON unto any one of the Perpetrators, or accessaries aforesaid, in the commission of the said crime, who shall *make a full and satisfactory disclosure of all the circumstances relative to the contriving and accomplishing the same* and of the names and places of abode of his or her associates, so that such associates may be apprehended and convicted: And all the judges, justices, sheriffs, constables and other public officers of this Commonwealth, (according to the duties of their respective stations) are hereby required and enjoined to use all lawful means to detect and bring to justice each and every person concerned in contriving or perpetrating the crime aforesaid.

Given under my hand and the great seal of the state, at Germantown, the third day of September in the year of our Lord, one thousand seven hundred and ninety-eight and of the Commonwealth the twenty-third.

THOMAS MIFFLIN.

By the Governor.

A. J. DALLAS, Secretary of the Commonwealth.

September 4, 1798.

Mr. Rawle. The court will permit Mr. Wharton to correct his testimony as it respects the bars of the door of the room of the prison in which Mr. Lyon was confined. As to the victuals he has been correct. But he had said, respecting the bars of that door they were five or six inches apart. The bars of the room doors of the prison are, generally, five or six inches asunder; but on an examination, he has made since, he finds himself incorrect, he has found a material difference between the bars of the doors of that room and those on the other doors on the same floor.

The court directed that Mr. Wharton should be heard in explanation.

ROBERT WHARTON, was hereupon called.

He now said that he would wish to *correct* his testimony. As to the bars of the door of the room in which Mr. Lyon was confined, *I was certainly in error.* That was *ingendered* by *my recollection* of all the doors of the prison. They are made of cross barred iron, five or six inches asunder. But on account of some observations made yesterday, I was induced to go down to the prison, and examine the door; and I found the doors of the room in which Mr. Lyon was confined, and which I recollect, was in the same situation then, that it is now, has perpendicular bars, rivetted to the original door, not more than two inches apart; perhaps not more than an inch and a half.

Mr. Condie. Could you put your hand in edgeways? I have been there a hundred times and I do not belive that they are an inch apart.

Robert Wharton. Some of them are an inch and an half and others perhaps not more than an inch.

Mr. Condie. Now Mr. Wharton, you have taken special care of that prison, for which the citizens of Philadelphia are greatly indebted to you: tell the court and jury, upon *your better recollection*, whether Patrick Lyon, incarcerated in a Lyon's den, could have received a drop of water on his parched tongue, during the most fervid season in which the yellow fever raged, unless it had been transmitted through the narrow spout of a teapot?

A. He could not, unless the door was opened.

Mr. Rawle. I stated before why Mr. Robinson did not attend: he was sick at the time. I wanted him to shew the *time when* the lock was taken off.

Mr. ROBINSON, was called.

He said, the lock was on the outer door when the Bank was kept in Lodge Alley. I went and found Cunningham up stairs. He asked me if I knew where Patrick Lyon's shop was, and whether I knew what vaults the doors were for? I answered, yes.

Mr. Lewis. Did you tell him where the shop was?

A. Yes, I believe I told him it was in Lombard Street.

Mr. Hopkinson. Now, are you sure, upon your oath, whether you told him, or he told you?

A. I will endeavor to recollect. He either told me or I told him.

Mr. Hopkinson. Ah! Is it so, gentlemen of the jury, that is good as far as it goes.

Mr. Dallas. Did you ever see Lyon and Cunningham together!

A. Never. There were doors to be repaired for the vaults, they were given to Mr. Lyon. I went to Mr. Lyon for the doors, while I was employed in building the vaults, I went there often.

Q. Pray, was it Friday or Saturday when you went there, and when you went the last time did you see Cunningham?

A. I do not recollect, but I never saw Cunningham there.

Mr. Hopkinson. Did you ever tell Cunningham that Mr. Lyon had the doors to make?

A. No.

Q. Did you ever tell the cashier or anybody else of Cunningham asking you about the locks?

A. I never did.

ROBERT RALSTON, sworn.

Mr. Rawle. Please to relate to the court and jury what you know of a former attempt to rob the Bank?

A. I was a Director at the time, [He asked permission of the court to refer to the notes, he had taken of the transaction; which being consented to by Mr. Lyon's counsel, leave was granted.] It was on Sunday morning about half past 8 o'clock August 5, 1798, when I was called upon by Mr. Smith the cashier of the Bank, who appeared to be un-

der great agitation, he informed me that the Bank had been broken open last night; and he was afraid had been robbed of property to a considerable amount—I advised him to be calm and recollect himself; and not to mention it to any of the Directors. The Bank was at that time kept in Lodge Alley—He returned to the Bank and I went there also; shortly after, I found, Mr. Smith Mr. Potter one of the porters, and we examined the cash-vault—the vault in which money was deposited—It was apparent that it was attempted to have been opened—The door was prized about two inches or an inch and a half from the stone casement—But not being able completely to force it without much violence and great noise must have indueed them to give over the attempt without accomplishing their porpose — The grinding of the stone work by a crow-bar was laying in the floor, in such quantity as sufficiently proved the endeavour had been persisted in for some time, and a ring was drawn out of one of the eyes—When the door was opened we found to the inexpressible joy of the cashier and myself nothing had been taken—This being ascertained and the door unlocked, it appeared that the Bank had not lost any thing—The discovery of the attempt was made by Mr. Potter, about 7 o'clock—He had often before found the door leading into the Alley opened, and once the front door unlocked, with a stick placed behind to keep it too—We examined very minutely, but we could find no traces of foot steps, or any other mark than that which I have mentioned of the sand on the floor by the grating of the crow-bar.

Mr. Dallas. Who had the key of the outside door?

A. The porter I suppose; but the lock did not appear to have been forced.

Mr. Levey. Who is intrusted with the key of the front door of the Bank?

A. I can not say.

Judge Yates. Did you ever attempt to ascertain who it was that attempted this robbery?

A. No sir, it was kept a profound secret.

Mr. Dallas. Was there any enquiry instituted as to the key of the front door, were the porters examined?

A. My recollection does not serve me—Finding nothing lost, we did not scrutinize.

Mr. Condie. Do you know whether the iron door laps *over the stone* jamb?

A. It does.

MR. FORTUNATUS, a free negro sworn.

Q. Where did you live, and did you know Cunningham?

A. I lived near Fourth street—I knew Cunningham.

Mr. Rawle. Do you know any thing of any person coming to the house to search the property of Cunningham?

A. Yes—A person came ,and there was more than one; but I do not know who they were, they were no acquaintances of mine, one was a shortish gentleman, an other a tall man—If I were to see him I could recollect him; though I did not take much notice at the time—They went into the room and examined his property—It was the next week after he died.

Mr. Rawle. Look and see—Is there one of the gentlemen in court?

A. That gentleman was one (pointing to Mr. James Barcley one of the jurors, empannelled on the trial.)

Mr. Rawle. Look round again.

Mr. Fortunatus. I have been mistaken.

Mr. Dallas. Did Cunningham board at your house?

A. Yes.

Mr. Dallas. Did you know Patrick Lyon?

A. No.

Mr. Dallas. (Pointing to Mr. Lyon) That is the gentleman—Did you ever see him visting Cunningham at your house?

A. No.

Mr. Levy. Did you ever see Cunningham in possession of the keys of the Bank?

A. I saw him have a key in his hand, which he said was the Bank key.

Judge Brackenridge. What kind of a key was it; was it a large key?

A. I do not recollect—He kept it generally to himself and had it in his bed room, I have seen it in his hand in a morning, when he was going down to the Bank: *but sometimes he did not come home in the evening.*

MR. ROBERT RALSTON, called again.

Q. Do you know Mr. Jonathan Smith and what is his general character?

A. I have known Mr. Smith for a number of years past. I have been in his company frequently; and have always considered him as an honest and upright man.

Q. Have you ever heard him utter an oath or imprecation of any kind or sort?

A. The general tenor of his language is as unexceptionable as that of any other gentleman—I have seen him in all situations, convicial and agreeable; but I never saw him in a passion.

Mr. Dallas. Do you mean when you say that you never heard him take an oath, that he would not say of a person he did not respect, that he was a damned rascal?

A. I should be sorry to think he would; I do not believe he would.

Mr Rawle. Do you think he would swear by his Maker?

A. No sir, I do not think that he would under any circumstances.

Mr. Rawle, read an extract from the act of Assembly dated 5th, of April 1790. Sect. 18, respecting the rules, orders and regulations of the prison, for the City and County of Philadelphia, prohibiting the admission of visitors to the criminal appartment. And regulating the solitary cells.

JOHN INSKEEP, *sworn.*

Mr. Rawle, How long have you known Mr. Smith, and what is his general character?

A. I have known him a number of years:—ever since the Bank of Pennsylvania was established, at least ever since he has been employed in it. I have been in his company almost daily; and have seen him in his social and convivial moments, and then as well as in general, I have observed his sobriety and civility. I have never heard him use a profane or indelicate expression. I have seen him in situations to excite that kind of emotion to which human nature is liable: but I never saw him angry.

Mr. Condie. How long have you been acquainted with him?

A. Several years. We have been members of several companies; and, on all occasions I have found him to be extremely discreet.

Mr. Condie. Have you not been a long time a magistrate *of this City*, and are you not bound by Law to punish any *person who* shall use oaths or indelicate language in your *esence?*

A. I have been a magistrate a number of years; but I never had occasion to check, much less to punish Mr. Smith, for any thing that fell from him in conversation It is not my practice to punish,—I merely reprove unless a person is charged before me with swearing; then Iexecute. the Law.

SAMUEL WHEELER, *sworn.*

Mr. Rawle. Did you examine the locks on the iron door of the cash-vault of the Bank of Pennsylvania after the robbery was perpetrated?

A. About six years ago,—It was in November, I remember, I was at the Bank of Pennsylvania, the President asked me if I would look at the lock.

This was at Carpenters hall. He took me down to the vault, the locks were on the doors and he asked, if I would take one off, I answered yes, if he would furnish me with a screw driver. He, thereupon, procured one. I believe the locks was on the door of the cash vault. When I took the lock off, he asked me if I thought the lock had been taking to pieces at any time since it was made. I told him it had.

Judge Yates. Why did you think so?

A. The screws that go through the small plate, which contains the wards, are filed off very smooth and laquered over in locks of that kind. These screws I suspect were finished in the same manner. The notch of the screws was a little burred; and the other side, where the screw came through, was a little burred. That was my reason, that I thought it had been taken to pieces.

Judge Yates.—Was you satisfied from the inspection of the lock, that it had been taken asunder?

A. Yes, perfectly.

Mr. Garrigues, A Juror, Would not the screws that hold the plates of the lock together, exhibit those appearances if they had been tightened a little more before they were put on the door?

A. It would certainly have produced a bur on the laquer; and left its mark on the notch; but this was so stongly marked, as to convince me that the lock had been taken a part. Then I was asked if I would take it asunder. I did as they asked me: and then they asked me if the lock

had been picked, I examined it; but I saw no marks
violence, such as a pick would have left. There was, ho
ever, some scratches upon the bolt. They asked me
that lock could be picked. I answered, that I thought
handily unless a key or an instrument was made on purpo
I put it together again. They asked me, if he lock h
been put on, as well as Patrick Lyon could put it on. I t
them, I thought not, I thought he could screw it better
It was put on in such a manner that it could not be tal
off by any person on the outside of the door; it must h
been done from the insde for the lock was put on with scre
with the burs. They could not be screwed out or punched o

Judge Yates. Was you examined before the court in 17

A. No, but my deposition was taken in writing abo
that time.

Mr. Ingersol. I took his deposition, I beleive it
been read in evidence.

Mr. Lewis. What sort of a lock was this one?

A. It was a good one, had double wards and those round
with an iron safeguard, no better was imported in those da

Cross Examined.

Mr. Dallas. Did you examine more than one lock?

A. No.

Q. Did this lock appear to be an old door lock?

A. It appeared to me to have been new; and put on wh
the door was made.

Mr. Hopkinson. Do you know if it was taken from
front door of the Bank, when it was kept in Lodge-alley; a
afterwards, put on the door of the cash-vault, when the Ba
was removed to Carpenter's-hall?

A. I do not know.

Mr. Dallas. Did you put on the lock on the cash-va
after you had examined it?

A. I think it is likely that I put it on.

Mr. Condie. Was this the lock of the outer or inner do
of the cash-vault; for I understand there are two doors
that vault?

A. I think it was the outer door of the cash vault.

Judge Brackenridge. You said that you thought Patr
Lyon could put the lock on better; pray, why did you fo
that opinion?

A. It was put on very well in that way: but there is a better way; and I know Mr. Lyon is acquainted with the best method. A staple riveted inside of the lock secure it so that no body can see how the lock is put on, and it is impossible for them to take it off.

Mr. Condie, you took the lock off the outside door?

A. Yes.

Q. What was the nature of the bolt of that lock? What sort of a rim had it?

A. It had no rim. I think it was a square plate to which the wards were riveted.

Q. Was it not a lock-out of which the latches had been taken?

A. I took the bolt out, but I cannot say whether the lock had latches or not. I merely looked into the lock to see whether it had been picked or not.

Mr. Patrick Lyon produced two latches, which he threw on the table, saying, those are the latches, which I took out of that lock when it was sent to me by the Bank to be altered and fitted to the door of the book vault, in Lodge-alley. The latches were handed to Mr. Wheeler, and he said, those latches were not in the lock when I saw it.

Mr. Lyon. Had not that lock which you examined formerly latches?

A. I cannot remember; it is six years ago.

Q. You say, you examined the lock for the purpose of seeing whether it was picked; and you mentioned a particular examination, you took it apart. You mentioned that the bolt was scratched, now Mr. Wheeler, answer; did you not put that lock upon the iron door of the cash vault, and were not the latches taken out previously?

A. I do not know.

Mr. Condie. Well Sir, you do not answer, now let me ask you; do not screws sometimes go through the plates of the lock with points; and was not that the case with the lock you examined?

A. They certainly do: but it is not the general way. In these high priced locks the screws are generally filed off; if not, they are commonly rounded off; but, I am pretty confident that the screws of this lock were neither pointed nor rounded off; but filed square. I recollect, that I felt over the tops of them with my finger, in order to ascertain whether they had been taken out and put in again, since the lock was finished. But I must acknowledge, that, if the lock had *originally latches in* it, they could not have been taken out

without unscrewing the screws; and, that in pulling it together again, the plate must be a little burred. In some instances the latches may be sliped out; but that was not the case in this lock.

The latches were again handed to Mr. Wheeler, and he was asked to examine them particularly. Now sir, could those latches have been slipt out?

A. I do not think they could without taking the lock to pieces.

Mr. Condie. Now your honors and Gentlemen of the jury. We are willing, and I am instructed by my client to say so, to put our cause upon this issue,—however daring it may appear, it is certainly magnanimous in my client, to encounter the risk. Let the Gentlemen of the Bank produce this lock about which so much has been said, on account of its having been taken apart; and we will put these latches into their former places.

Judge Yates. Mr. Fox, Mr. Smith, you are the principal officers of this institution where is this lock?

A. It is down at the Bank.

Judge Yates. Can we see it?

A. Yes sir.

Mr. Fox, now left the court house in order to go to the Bank and bring the lock. Mr. Lyon spoke to his counsel Mr. Condie, at this moment, and the reporter heard him say—they dare not bring it by G—d.

Mr. Condie.—Mr. Wheeler are you accustomed, in the way of business, to pick locks when the keys are lost?

A. I have picted two or three.

Q. Did you never pick more than three?

A. No, I have done it when I have been called upon.

Mr. Condie. Did you ever take a lock to pieces, after you had picked it?

A. Yes I have.

Mr. Condie, Will it not shew the mark of the pick?

A. Generally it will.

Mr. Condie did you perceive the mark of a pick in this lock?

A. No.

JOSEPH SIMMONDS *sworn.*

Q. You sold locks to the Bank, what kind were they?

A. It is so long ago that I can scarcely recollect. Mr. Wheeler called upon me: but whether Mr. Robinson did *or not I* cannot remember.

I was applied to for a lock of the best quality; but it was not mentioned to me, that it was was for the Bank. I now remember that Mr. Robinson called to look at a lock of a particular description. I was then in the way of importing patent locks singly as samples, and the one he looked at was of that description. It was a large twelve inch dead lock, stamped patent, copper bolts and copper wards. Mr. Robinson bought two of me, they were both of the superior kind—he said, if they would answer he would keep them—if not, he would return them.

Mr. Dallas. Would you know them if you were to see them?

A. yes.

Q. Well, do you remember whether either of them had latches?

A. They were dead locks without latches. Those delivered to Robinson were not locks with Latches: though some he examined had latches, as well as a dead bolt. Some of them had three bolts.

A Juryman (pointing to the latches on the table) Do you think those latches were in the locks you sold?

A. I do not know, I cannot recollect.

Mr. Fox now returned with two locks, which he brought to the court. They were wrapped up in paper making two parcels they were unwrapped by Mr. Fox, and as soon as they were exposed to view; Mr. Lyon again spoke to Mr. Condie who was sitting by him and said I told you so, by G—d they dare not bring the lock, neither of those is the one.

Mr. Condie spoke in a low tone of voice, and said are you sure of that Mr. Lyon, Mr. Lyon said yes I am, and you will shortly see a curious attempt to impose upon the understandings of the court and jury. I wish you to watch them carefully*.

MR. ROBINSON called again.

Q. Do you recollect whether the lock that was on the cash vault in Carpenter's-hall, was the same that had been on the front door of the Bank in Lodge-alley?

A. The old lock which was on the front door in Lodge-alley was, for some time laid by; but it was afterwards put on the iron door of the cash-vault in the Bank at Carpenter's-hall.

* The reporter sat on the Prothonotary's seat at the back of Mr. Condie and Lyon, and had an opportunity of hearing their conversation.

Q. Mr. Robinson do you know whether that lock had latches in it when it was put on the book vault in Lodge-alley?

A. There were latches in it when it was on the front door in Lodge-alley but when it was ordered to be put on the book vault, the latches became incommodious and I took the lock down to Mr. Lyon to take them out, and then it was put on the Iron door of the book vault and on the removal to Carpenter's-hall the same lock was put on one of the cash vault doors.

Mr. Ingersol. Was it possible to pick that lock?

A. I do not think it was. The whole of the wards were included in a tube to which no pick could have access.

Q. What did you do with the locks you procured from Mr. Simmonds?

A. One was put on the front door of the Bank, the other was put on one of the doors of the book vault.

LEVI HOLLINGSWORTH AFFIRMED.

Mr. Lewis. Are you acquainted with Patrick Lyon?

A. I have some knowledge of him. I remember being called upon by Mr. Stocker and Mr. D. Smith some years ago, but I do not recollect the time, to accompany them to see an improved Fire Engine invented by Mr. Lyon.... Twenty gentlemen or more were there. The Engine was remarkably well made, and threw the water with great force. The principles upon which it was constructed are such as met our general approbation; on this Mr. Lyon and myself were perfectly agreed it was a pretty little thing, and the gentlemen seemed much pleased with its execution; they, perhaps, had not seen the like before. The object, at the time, was to recommend Mr. Lyon's workmanship. We joined in this object. It was about ten or twelve years ago, and that is all the acquaintance I had with Patrick Lyon.

[During some time past the gentlemen at the bar had been examining the two locks brought up by Mr. Fox. Mr. Lyon now declared aloud that neither of these was the lock he alluded to.]

Mr. Dallas. We wanted Mr. Fox to produce the lock that was on the front door in Lodge-alley, and afterwards put on one of the doors of the book vault in Lodge-alley, and afterwards on the cash vault in Carpenter's-hall. That was the lock that had these latches in it, (holding the latches in his hand.)

Mr. Condie. It is a strange thing that these gentlemen should keep back the identical lock we enquire for; and offer to palm upon us two others with which we have no concern!

Mr. Lewis now leaned down upon the table, and enquired of Mr. Fox, in a low voice, whether those were the locks upon the doors of the cash vault. The Reporter did not hear the answer, but Mr. Lewis called upon Mr. Rawle, in a more elevated voice, and desired him to offer Mr. Fox as evidence to prove the fact; for he was willing to swear those to be the locks, and that there was no other. Mr. Fox was in the act of rising, when Mr. Lyon said to Mr. Condie, do not let him swear, it is too bad, we will manage it another way. Call Robinson, and his testimony will shew that neither of them is the lock, and Mr. Fox will not expose himself to a perjury.

Mr. Condie then spoke to the court and the opposite counsel, pray do not offer Mr. Fox to prove any such thing. We will call Mr. Robinson who knows the lock, for he has often took it off and put it on.

MR. ROBINSON *was called.*

And he declared that neither of these were the locks that were on the cash vault doors at the time the robbery was committed; that is very apparent, said he, these locks are dead bolts, and never had latches in them (he had the locks in his hands.) The lock which had been on the front door was applied to the cash vault: in that case, the latches were no longer necessary; but besides these are larger locks than that was.

Mr. Condie. I wish the gentlemen could be induced to go down to the Bank, and procure us the lock we are in search of.

Mr. Dallas. Let them produce *that lock*, and we will stand to the consequences. My client, with a magnanimity peculiar to himself, instructs me to say, that if they will produce *that lock*, and if he does not instantly, in the presence of the court and jury, replace the latches, he will relinquish the cause. And such confidence have I in his integrity, that I know I do not risk much when I say, that his counsel will abandon him altogether if he does not perform his promise.*

* The Reporter felt a strong sense of surprise at this offer being repeated and looking round he perceived the audience, the bar, the bench and the jury, as it were, astonished at the challenge. A silence of some minutes succeeded, and a murmur ran round the hall, of a very delicate nature, difficult to explain.

ANTHONY STOCKER sworn.

Mr. Stocker state to the court and jury what you know of the transaction which took place at your father's house in the country?

A. One evening I was returning home with my father: he was in the first chair, and I following in another, when we were met by Patrick Lyon, about half a mile from the corner of the lane that leads to my father's house. He stopped the first chair in which my father was; my father asked if that was not Patrick Lyon, and then enquired of him where he had come from. He said from Wilmington, that he had been at our house and staid some time—that he had come to clear himself, as he understood he was sent for. He told him he would go to a tavern for a night's lodging, and would call upon him next day. Mr. Lyon returned about nine or ten in the morning—my father was out of the house at the time. I went to him, and he told me he would be with Mr. Lyon immediately, and that I should ask Mr. Lyon to remain till he came. My father came in with Mr. Fox and Mr. Smith, about three-quarters of an hour afterwards; during which time Mr. Lyon remained in the piazza of the house—There was no conversation passed between him and me, except that I requested him to remain, as my father had directed me. My father had expressed a hope, that Mr. Lyon would be able to acquit himself of the suspicion which was entertained against him.

Mr. Condie. Did not Mr. Lyon request your father, when he met him in the lane the evening before, to permit him to go back, and lodge in the stable or barn?

A. I do not know.

Mr. Lewis. Was not your father's house very full at that time?

A. Yes, the house was very full, so much so, that I was obliged to sleep on a settee. We had, at that time, a great addition to the family—Several of our relations had taken refuge from the fever at my father's country seat.

Mr. Rawle read the order issued by Alderman Jennings, dated the 20th October, 1798: On the 21st the examination took place, and Mr. Rawle concluded by saying, that the testimony on the part of the defendants was closed.

MRS. PENDERGRASS *was called.*

Mr. Hopkinson, asked if she had lived with Mr. Jonathan Smith, and whether she had not heard him use some harsh epithets during that period?

A. He had a black boy living with him, who was very mischievous:—When he has been correcting him, I have often heard him call him a damned scoundrel, and a damned rascal; but I do not recollect to have heard him ever use any other bad language. It is a good many years ago; I think seven or eight, and I was not very particular in observing his expressions. The boy was afterwards turned away for his bad behaviour. I never recollect to have seen him in a passion, at any other time, but when he was roused by the bad conduct of that lad.

Mr. Lewis, Are you positive that he used the words, *damned Scoundrel* and *damned Rascal*, when he was correcting that Boy, more than once?

A. Yes, I have.

Q. Do you remember the Boys name?

A. No.

JOHN BOYD, *sworn.*

Q. Did you ever in conversation with Mr. Annesley mention that Patrick Lyon was in town, the day preceeding the robbery of the Bank?

A. I have heard that John Boyd a Bricklayer living in Southwark, was reported to have said what you enquire of me. My name is John Boyd—I am a bricklayer and live in Southwark but I never mentioned to Annesley or any body else that I had seen Patrick Lyon in Town at any time.

Q. Do you know any other John Boyd a Bricklayer who resides in Southwark?

A. I have resided in that neighbourhood five and twenty years, and I never knew any person of the same name and of the same occupation or residing in that district.

Q. Mr. Annesley has said, that the John Boyd he alluded to was building a kitchen and pointing a house next door to Mr. Annesley's; was you engaged in that work?

A. I was, but I was not in town when the robbery was committed, I therefore could not have seen Mr. Lyon at the time mentioned. I left Philadelphia soon after the fever

broke out and went to Sheerman's Valley and was there when I was first informed that the Bank of Pennsylvania had been robbed.

Sometime after, I returned down to Brandywine hundred, Chester County, where I had some relations and they informed me that a man in a plain dress apparently a quaker from Germantown had been there some time since enquiring for John Boyd, a bricklayer. My sister in-law informed him that I was gone to Cumberland County and had not returned. After the election in October, I went back to my usual place of abode in Southwark and I learnt that previous to my return that Mr. Stocker had been wanting to see me on some particular business. In consequence of this I went across the fields to Mr Stockers, I saw a gentleman alight at his gate and go into the house and when I came to the door I was asked to walk in and I found Mr. Stocker in conversation with the gentleman that had just entered. He gave him a check on the Bank for some money and took his receipt for it. He then asked me if I knew Patrick Lyon I answered, I did not. He said that I must certainly know him; for he lived next door to the place where I built his Coach house and Stable. He seemed surprised when I replyed that I did not. I had heard the story of Mr. Lyon being suspected of being concerned in the robbery; but from what I had heard, I did not believe that he was guilty. Mr. Stocker said, that at first he was of the same opinion himself: but the loss sustained by the Bank was so very great as induced him to be very particular in his enquiries. In truth I had no acquaintance with Mr. Lyon until a long time afterwards, when I was introduced to him by Captain Guy.

Judge Yates. Did you point the kitchen of the house where Mr. Annesley lived?

A. I did, It was Mr. Douglas's house.

Mr. Rawle. Might there not have been a journeyman bricklayer of the name of John Boyd?

A. I dont know one, and yet I believe I know almost all that belong to that honorable company. There is Mr Benjamin Taylor on your jury who knows this as well as myself for he is the worthy President of our honorable Company of Bricklayers.

I lived in Christian-street. Before the fever came on, built a kitchen for Mr. Molliere next to Shippen-street which is perhaps the building alluded to.

Mr. Dallas. Do you know the journeymen bricklayer *that live* about that neighbourhood?

A. I know them generally. I waited on Mr. Annesley and enquired of him, what was the reason of his coming to Brandywine in search of me? He told me that one Boyd a bricklayer had mentioned to him that he had seen Patrick Lyon in town the day before the robbery; but that I was not the man. There is a son of mine, however, that is a bricklayer; but his name is Hugh Boyd, but he was working, at that time at Mud-fort.

CLEMENT G[illegible], *sworn.*

Q. Did you hear a conversation between Mr. Lyon and Mr. Robinson concerning the lock that was put on the front-door of the Pennsylvania Bank?

A. On the 11th, of August 17[illegible], Saturday or Seventh day, I went to Carpenter's hall to see Samuel Robinson. I was in the vault there—and Samuel Robinson brought in a lock that was for the front door of Carpenter's-hall, and Patrick Lyon was there at the same time fixing an iron door that was going to be hung. He took up the lock and found fault with it. Samuel Robinson said, it was the best lock that he could get in Philadelphia out of the stores. Lyon said that he thought it was not a lock good enough for a Bank door; he thought he could make a better.

JACOB HORTON, *sworn.*

Q. We call this witness to shew what was the treatment of Mr. Lyon during his confinement in jail—to show that he could not have received his dinner when it was brought to him unless the door was unlocked.

Mr. Ingersol. We shall except to this testimony.

Mr. Hopkinson. To save the trouble of contention we will wave it, and give you another.

LAMBERT SMITH, *sworn.*

Q. You are the keeper of the prison, you are consequently acquainted with the nature of the iron door of the room that Patrick Lyon was confined in, please to describe it?

A. The bars are not wide enough to get a hand through. They are generally one inch a part. I believe one of the appertures is one inch and three-eighths; it is the room at the north west corner of the prison; you might have handed

him a thin slice of bread through: but no drink, unless through the spout of a tea-pot or some such contrivance, which I have been informed was the way in which he was fed.

Mr. Condie. You usually give your prisoners water and molasses for breakfast.

What is the proportion?

A. We give it to them as sweet as they would have it, we generally draw about four gallons, and give it to them with mush or bread.

Mr. Condie. Is not the room so situated that if Mr. Lyon had been perishing with hunger or thirst he could not be relieved by any person who might have been within hearing?

A. It is so situated. There is a lattice put across the entry, which cuts off the communication with the women's appartment and that room.

Mr. Ingersol. Is it a healthy room? Has it a free circulation of Air?

A. There is not a more healthy room in the prison:—but I cannot give my opinion as to what it may be when the yellow fever prevails in town.

Q. Do you remember any thing of conversations between Mr. Haines and yourself respecting Patrick Lyon?

A. He has called at the prison daily and talked of the robbery. He has said he believed Patrick Lyon had as much to do with it as Davis had, but this was said since the trial began, I think it was last week.

Mr. Condie. I wish to prove that Mr. Lyon has lost the employment of several gentlemen, as well as the Bank of Pennsylvania, in consequence of the suspicions and allegations made by the members of that Institution.

ISRAEL ISRAEL, sworn.

Q. By Mr. Condie—State what you know of the refusal on the part of the Bank of Philadelphia to employ Patrick Lyon?

A. About 18 or 20 months back, I was appointed a director of the Bank of Philadelphia—We had several iron doors to make and locks to provide for its safety—I was inclined to employ Mr Lyon in the business: but the cashier Mr. Todd was enjoined by the board to attend to the subject, and he employed Samuel Wheeler—I believe his reasons were, that he did not consider it safe to trust Mr. Lyon, who

was labouring under the imputation of being concerned in the robbery of the Bank of Pennsylvania.

Mr. Ingersol. Is this testimony to go to the jury! shall Mr. Israel's believe and suppose, as to the motives of Mr. Todd be received in evidence? Why is not Mr. Todd here to answer for himself?

Mr. Condie. Then we will ask this question: Did not the Bank decline employing Patrick Lyon in consequence of this allgation being made against him?

A. The Directors did not employ any person; it was the cashier, and he refused to employ Mr. Lyon, because it was said that he robbed the Bank of Pennsylvania—I mentioned this to Mr. Lyon at the time.

Mr. Ingersol. This is no testimony—The jury cannot be permitted to hear it.

A Juror. What length of time was Mr. Lyon confined in the prison?

A. by Mr. Dallas. We will procure the docket in order to satisfy you, gentlemen.

Mr. Annesley asked permission to offer a word in explanation: When speaking of Boyd the bricklayer, he had not said John Boyd but Boyd only.

Court Adjourned.

Eadem die

The prison docket was produced, and an extract read; by which it appeared, that Mr. Lyon was close confined in a cell in prison, from the 21st of September, to the 29th of October, when he was heard on the Habeas-corpus before the chief-justice.

MR. HOPKINSON.

If the court please, and you gentlemen of the jury, I dare say, that there is not any of us engaged in this trial, whether it be the counsel, judges or jury, that have not some regret, that gentlemen of such respectability should be the objects of this enquiry: but the Laws of the Land must be executed, and justice impartially administered—Whether its punishment be inflicted on the high or the low, the rich or the poor—the Law is equal to all—It is one of the greatest blessings of this Government that it is a Government of Laws and not of men; and *here* the Law is no respector of persons; those who violate its ordinances must answer for it, publicly, in our courts of jurisprudence—I regret that it falls to my lot to be the prosecutor of men of

such high standing in society: but it is a duty I owe to my client and my professional engagements to this court, compels me to exert my best abilities in obtaining justice for Patrick Lyon—In this instance, to his interest I shall exclusively attend.

I consider it unfortunate for the defendants, that their counsel should have opened with a degree of boldness which their testimony does not authorise or warrant—They pretended to *justify* the conduct of their clients in their treatment of Patrick Lyon—What is the *justification*? *Frivolous, indeed!!* It is strange that they should have fallen into this mistake: I caution you, gentlemen of the jury, from falling into the like error—The respectability of the defendants, and their connections the immense importance of the institution which they respresent; all incline to produce the idea, that their actions were correct, or, at least, were justifiable; but when they are brought into this court; and charged, in the manner alledged in the declaration on the writ of trespass on which this issue is joined, the Bank counsel ought not to have assumed such high ground—True, the institution is rich and supported by some of the first characters in the land, and here you see what! Opposed to them, a poor unconnected foreigner, whose walk is in the humblest path of life; who earns his living by his daily labour—When I look at the two characters, one living in splendor, whose domestic establishments are calculated to excite and catch popular admiration—and the other scarcely removed from the garb of poverty, I do not wonder that they built up a confidence on this high ground: but their fall will be, in proportion to the eminence, the greater! They will learn to know and feel, that, the Law indeed is no respector of persons, and when Lyon shall tell the heart rending tale of his sufferings under their persecution—I trust, in your estimation, he will be considered as standing at least, on an equal level with them. He must triumph—they must tremble—He sits composed; they sit pale and confused—He thanks his God and his country that this day is given to him, after a long and tedious confinement; after escaping the dangers of pestilence and famine—that this day is given to him to make his innocence manifest to the world: and confides to you upon your oaths and affirmations to give him a just retribution for his sufferings.

The legal ground of this action is MALICE—Let me state, that on this enquiry we are to take one thing for granted; *that* Mr. Lyon is perfectly innocent of any participation

in the robbery of the Bank—I take it also for granted, and the evidence will support me in insisting, that he is clear of that crime. Another point must also be granted, that Patrick Lyon, under a *charge* of an offence, of which he is wholly innocent, made by the present defendants has suffered in his person what is shocking to humanity to relate; and in his property, such losses, as he has even not, after this lapse of time, recovered—The question then, for your consideration, will be, whether Patrick Lyon, for his losses and sufferings, is not entitled to some retribution from the defendants by whose hands they were inflicted—I take it that the question of his innocence is already decided, by the rejection of the bill of indictment for a criminal prosecution against him; by the Bank having recovered the money from Davis who restored it, and the proof that Davis and Cunningham were alone concerned in the robbery—I take it, that, he has suffered wrongfully; and that the defendants are proved to know the perpetrators: he comes now to the proper tribunal to *this* court and *this* jury for redress—It is a law maxim that every wrong has a remedy. Gentlemen of the jury, you have heard much said, about the foundation of this suit; and we were told that it is incumbent on us, to prove that the prosecution of Patrick Lyon for the robbery was a malicious prosecution, on the part of Mr. Fox the president, Mr. Smith the cashier of the Bank, Mr. Stocker a director of the Bank, and, who on this occasion acted as a magistrate to commit; and Mr. Haines who acted as high constable—The declaration lays that prosecution, (in one of its counts) as false and malicious—That it was false, is proved by his innocence; and therefore, malicious in the legal acception—When we state, that this prosecution was malicious we do not mean to say, neither does the law require us to say, that these men are of a malicious temper, or led by a malevolence of heart—The legal meaning is different—A man of the most humane disposition, may be legally involved in a malicious prosecution—When a man is charged with an offence, the law requires that it should be done in a particular manner—When he is imprisoned for a robbery, he must be charged upon oath—If a magistrate acts otherwise, he does it at his peril, it is true, that a magistrate is entitled to exercise a sound discretion; but it must not be arbitrary, or whimsical, it may be a mistake: thatapology is admitted for as much as it is worth—Here, however, there has been no mistake; at most, it can only have been in the first instance:

but it was persisted in after the error was manifest—It is not necessary for us to prove that Fox, Smith and Stocker have black & rancorous hearts we could not prove it, their general characters are not of that discription ; but it has been proved as they are charged, that they took means to destroy the plaintiff without cause ; and, if so, the fact shews, in the intendment of law, that it was done maliciously—The defendants, without reasonable ground, infringed upon the rights of the plaintiff, (which they were bound to respect) and that without any testimony before them—they have charged Lyon with the most audacious robbery ; and attached to him all the circumstances and odium of guilt, without any reasonable or probable cause, such as ought to govern the conduct of discreet men—The want of probable cause is prima facia evidence of malice.

I take this to be the law of the land—I will not trouble you with reading books to prove it—I refer for the accuracy of my statement to the court—The want of probable cause is presumptive evidence of malice—It was necessary for us to declare malice—We have declared it ; and the law infers it from the facts which we have proved—We alledge it was intended to ruin and destroy Patrick Lyon; no measures they could have taken, would have been more effectual to that purpose.

He believed it was sufficient on this occasion to rest the case on the want of probable cause ; but so much had been said of malice, that he would add something on that point. From the want of probable cause, the law infers malice, nor is it necessary to discriminate between the defendants, for the motives are equally imputable to all, nor is it material to discriminate between the individuals and the directors of the Bank, for it is conceeded, that whatever retribution the plantiff is to receive, will be made by that institution—But we have (beside the legal inference)express proof of malice in Smith from the deposition of J. Rizer and of a nature so peculiarly malevolent that nothing could justify, and which he believed had never been equaled. The cashier after the recovery of the money, declared his determination to hold the plantiff in prison month after month, and utterly to ruin him in his circumstances and reputation. To obviate this testimony they bring forward several gentlemen to testify that Mr. Smith never swears, but to what does such negative testimony amount, merely to this that they do not re*collect they ever* heard him swear, he might be more gu?

ded is such company, but in his own house in the presence only of his domestics or his hair dresser, he does not appear to have been so cautious, Mrs. Pendergrass who lived in his family, and who gives him a general good character, tells you that Mr. Smith knows the use of an oath as well as another man, he called his black boy, a damned rascal &c. This gentlewoman & Rizer have declared that he did swear, Mrs. Pendergrass has no interest in giving this testimony, but if not true, she subjects herself to the pains and penalties of perjury; as for Rizer beside being subjected to the like legal punishment, you find him standing on the brink of eternity, it is not likely he would die with a perjury on his lips. But there is internal evidence of truth in Rizer's deposition, which he here read, and concluded, that it proved not only express malice, but the most diabolical malevolence. The cashier would persecute him to utter ruin. Why would he thus pursue him, not from just and honorable motives, but from a desire to screen himself from the imputation of gross negligence of duty, which furnished the porter and his friend Davis with the opportunity of committing the robbery.

He told Cave, also, that he had got the man who robbed the Bank, and that it was Patrick Lyon to a certainty, thus endeavoring by his calumny to ruin Lyon in the mind of every man with whom he was acquainted! How did he dare to say that Lyon was the man to a certainty. Did he prove this before the grand jury, who returned the bill *ignoramus?* Has he proved it to you? No, it may be safely said that there is not a man who has heard this trial, who believes, that after the discovery of the robber Davis, Patrick Lyon was even suspected by the cashier himself, yet how has he acted since, why instead of acknowledging Lyon innocent, letting him out of jail & making attonement to him for his unjust imprisonment, he has continued to prosecute him he had him fast and he kept him fast, as he swore he would, and if he has not completed his ruin it has not been for want of energetic endeavors. His counsel will tell you, Smith had probable ground for suspicion, but what says Smith himself—not that he suspects Lyon, but that he is the guilty man to a certainty. How did he dare to say this a citizen of Philadelphia? It is such an outrage upon to truth and such a malevolent attack upon Lyon's character for which nothing that Smith posseses can adequately compensate Patrick Lyon.

Another of the defendants, but we must not class him with Smith, he is a magistrate, and has only acted a wrong part by mistake, we must not call it by so harsh a name as malice, Mr. Stocker who appeared at first to be friendly, was, however afterwards so imprudent as to say that we have him in prison & will keep him till he rots, until his flesh falls from his bones, or his bones will stick together, this may not have been said in malice, but it savours strongly of personal rancor. But why did Mr. Stocker say this was it because Lyon robbed the Bank or because he was borne down by misfortune and would not consent to gratify them by an acknowledgment of guilt while the Bank knew him to be innocent? But suppose there was no malice in this, with respect to Mr. Stocker, what are we to think of his conduct ofter the 20th of November 1798, when a full developement of all the circumstances of the robbery was made by Davis. This defendant as a Bank director must have known that Lyon was innocent because he knew they had recovered the money. Let him answer in good conscience, he knows that a solemn contract was entered into with Davis, that he should escape if he would make a full disclosure of all the circumstances attending the robbery: Did Davis, either in word or on oath, ever charge or insinuate that Lyon was accessary to the crime. No, he did no such thing—on the contrary, he told them explicitly that he and Cunningham were the only persons concerned, that the project originated with Cunningham, and that those two divided the money between them. These circumstances must have been sufficient to convince every disinterested person that Lyon was an innocent and a much injured man. The stockholders and directors and the president of the Bank must necessarily on the developement of the 20th of November 1798, have every one of them been satisfied in their own minds that Patrick Lyon was as innocent of the robbery, and no more on accessary to it than Jonathan Smith himself—nor could any of them say that Patrick Lyon was the guilty man to certainty, without being influenced by the most malevolent and wicked motives. It is not intended by this language to injure any man, nor is a wish entertained to offend any person—But such is the peculiar situation of the plaintiff, laboring under the oppression of a most influential body of men for eight years, that his counsel are compelled to speak out in stronger language then is usually employed at bar.

After the grand jury had refused to consider Lyon as the accomplice of Davis and Cunningham, what could induce his persecutors to continue their endeavors to put and keep Lyon down, but malice, and malice too of the most execrable kind. But they assign another motive, they justify themselves on the principle of self defence—We must put down Patrick Lyon or he will put down us—We must cripple him in his cause, and in his means, or he will dare to meet us in a court of justice, and they have hitherto pursued the road they had laid down for themselves, but it is hoped you gentlemen of the jury will stop their career.

After they had taken up Davis, and entered into terms with him and suffered him to escape, knowing from him that no person was concerned with him in the robbery but their own porter who lodged in the Bank. They could have no motive for sending a bill to the Grand Jury implicating Lyon in the robbery. If Lyon was concerned they ought to have taken up Davis when they were informed that he was in town three or four years ago, they might have used him as a witness against Lyon, and defended themselves in this action. But no they let him roam at large to commit other depredations as opportunities may offer, they ask advice of Mr. Wharton, and he tells them, that as they had made a contract with Davis, they were bound in honour to conform to the terms—there contract was a rope of sand and they knew it, but they set up this honorable contract in their defence. It is a cloke and nothing more, and adds another proof of their deep and diabolical malice against the plaintiff. They knew they could not convict Patrick Lyon of the robbery, but they took the mean revenge of putting it on record, that they had chose to suspect him of being an accomplice with the robbers, that the story might be circulated more extensively, and that your Children to the latest posterity may read it, and point the finger of reproach at the innocent offspring of Patrick Lyon, a man as blameless and as upright as any one amongst us. The meanness of this attempt to couple innocence and guilt. Patrick Lyon and Isaac Davis, is much of a piece with the rest of their conduct. I rejoice in the integrity and discrimination of the Gentlemen who composed the grand jury, who refused to second the designs of the defendents. They on their oaths declared, that the bill laid before them for the robbery was true, so far as respected Isaac Davis, but not true as to Patrick Lyon. If this is not a proof of malice, I do not understand the *meaning of* the term.

Mr. Hopkinson proceeded to remark on the report of the Committee of the Legislature, who must have received the information, and the colouring from the officers of the Bank, and he declared this latter transaction to be totally unwaranted, and marked their malice in a still stranger degree. They knew from the confession of Davis, who had returned them the money, that no person but Cunningham was concerned with him, but still they profess to believe that that the robbery had not been committed without his privity. Cunningham and Davis had actually devided the money and on the discovery actually returned the cash and the notes within a small balance. Now if Lyon had been a party, would he let them take all the money and go with his apprentice to Lewistown with so little, as to be obliged to work at his profession for a support in a strange place during the prevalence of the yellow fever. They know all these facts, they had the evidence of them; how can they talk about probable ground for suspicion, or of innocent mistake. After a malicious prosecution of Lyon, they kept my client two Months in jail during the pestilence, after they knew him to be innocent, by knowing who the robbers were; and place him on the records of the City, as a man guilty of robbery; not only in the City, but by the report of the Committee, they have caused it to be inserted on the Journal of the Legislature, which is published in the German aswell as in the English language, and directed by the Constitution to be distributed through every County of the State. Is not this proof of malice! Having once made the charge, they would not discharge him. When Lyon was brought up the before the Supreme Court on an *habeas corpus*, they came there armed with counsel to oppose his liberation. (They would not trust the Attorney General alone but, employed Mr. Rawle also.) They in part succeeded, the bail however was reduced from 6000 to 2000 dollars which he soon obtained, but he continued under the charge of felony for a month longer.

I have enumerated these circumstances to shew the Court and Jury clear and decided proof that some improper motives actuated these gentlemen and urged them to persist after they knew the plaintiff to be innocent.

I do not mean to assert or to insinuate that the defendents were concerned in the robbery, though I believe there has been gross negligence and that the Bank was robbed with *the true* keys. The defence set up goes upon the idea that *false keys were* used to open the doors of the cash-vault

hey have not proved that the doors were even locked the pre-ceeding Evening, true it is said in the report of the Committe ıpon the report of the officers of the Bank, that Davis declared Cunningham procured false keys; why have they not se-:ured Davis and brought him here to prove this allegation? The very circumstances of screening him and suffering him :o be at large in order to persecute Mr. Lyon is an additi-onal proof of malice. They know every thing from Davis, and yet they affect to think Lyon was concerned, none (says the old proverb) are so blind as those who will not see; they had more reason to suspect Cunningham than Lyon, but they would not look that way, they also protected the guilty Davis, whilst the innocent Lyon was locked up in a solitary Cell in Prison, deprived of the conversation of his friends and not allowed the common necessaries of life.

Take their own statement of the fact, and from thence it is apparent, that the robbery was committed from the inside, the back door was usually secured by a bar on the inside, which could not be reached from the outside: they knew that Cunnigham had been frequently intrusted with the keys of the cash-vault to take out and put in the money and notes both Mornings and Evenings, therefore they must necessarily infer, that if the robbery was traced in that channel, it would lead the enquiry to higher source.

To me it is clear as noon-day, that Cunningham was the proper person to be first looked to, and none but those who are wilfully blind, can deny it, unless it be in order to screen themselves from the charge of neglect. What a labyrinth of absurdities, have they involved themselves in, by persuing the wrong clue. If they had intended to prove their care, they should have shown you that the Cashier and Teller each locked his separate door on Saturday afternoon, and retained the respective keys in their possession; but this has not been shewn. Simmonds is brought to prove the lock could not be picked, but he does not sufficiently understand the subject Coldwater has told you that Smith frequently gave the keys to Cunningham and the porters, because he tells you that the money was frequently brought up of a morning before the Cashier came to the Bank. The night of the robbery Smith went to his country seat, and there Annesley saw him the next morning, why did he not produce his key to Annesley at the moment, and say here is my key, it could not be effected with the true keys, you have the one and I have the other; why did they not ascertain this important point when Annesley was giving his testimony—the only reason which

occurs to me for this silence, is that the keys were left with Cunningham as they had frequently been before. When they recovered the money why did they not get the false keys if there were any. They tell you that Davis made a full confession, do you imagine they would not ask him how the Bank was opened, if they did not know that the true keys, were left with Cunningham, either Cunningham had the true keys or they or him had left the vault-door open the preceeding Evening. Their silence on this point proves that the facts are against them. They did not preserve the same silence before the members of the Committee, they there made insinuations, but they have not attempted in this court to substantiate them, they know, that by sifting the testimony by a cross examination the truth would come out. I do not believe it necessary to say any more in order to prove them guilty of maliciously prosecuting Lyon and being actuated by improper motives; I will however ask your attention for a few moments to another circumstance. Coldwater and M'Aninch watched the Bank the night of the robbery and it appears that they were equally attentive to their duty, then as at other times, and thay are confident that no person entered the Bank from the outside, they admit that they heard some noise, but it was only the revellings of the hostlers at Israel's livery stables, at some distance back of Carpenters-hall, they had also two vigilant Dogs with them, that never failed to give an alarm, if any person came near the spot. Mr. Fox and Mr. Smith were acquainted with these facts, from which one must think, they ought to have leveled their suspicion to the person who was inside, this would have been a natural course, but they refused to look that way, though it proves to be the truth that Cunningham perpetrated the robbery from the inside either with or without the presence of his accomplice, who might have been concealed in the building before the watch was set. One of the watchmen even hinted to the officers, his suspicion as to the robbers, he said it would not have happened if they had taken proper care of their keys; M'Aninch says expressly to the Cashier, "if you had been "more careful of your keys the Bank would not have been "robbed." And Coldwater also swears that the Bank could not have been robbed in the night, but it must have been done in the afternoon on Saturday, or after the Watchmen left their stands on Sunday morning at 5 o'clock. The suspicions of the Watchmen were verified in the event, and it is

clear that their inside porter committed the robbery. This fact is also proved by their own witness Annesley, who says, " there was no lock on the back door, it " was fastened by an iron bar and latch on the inside, there " was no fastining on the outside at all, it had the ap- " pearance of being opened on the inside" he said also, when he came to the Bank " he found the front door fast and " then went round to the back door which he found on a jar. " He pushed it open and looked in and found the cash-vault " open." These circumstances ought to have convinced him, that whoever had robbed the vaults, must have been inside of the Bank, yet they will not see Cunningham but look solely to Lyon, against when they had not a thousandth part of the ground for suspicion as, they had against Cunningham—nay so blind are they on that side, that they even put a warrant into the hands of the guilty to apprehend the innocent; altering the old proverb of "set a thief to catch a thief" by setting a thief to catch an honest man. Putting these circumstances together you cannot get rid of the conclusion, that they persued Lyon wrongfully intending and maliciously contriving to injure him in his good name, fame and credit, and causing him to be esteemed amongst his neighbours and fellow Citizens as a felon and a thief, or being an accessary to the fact of the robbery.

Contrast the conduct of Cunningham, when Mr. Annesley told him the Bank was robbed, he came down stairs and when he saw the vault doors open, he acted the part of a madman, he tore his hair, & appeared extremely agitated & said he should be suspected. This conduct did not lead them to conclude that he was the guilty person. But when Lyon appears before a number of gentlemen of the first rank, at a voluntary examination, greatly fatigued and weakened from the journey he had undertaken and the anxiety of his mind—when one of these gentlemen, threw him (as it would any innocent man) into confusion, by stateing as truth what has turned out to be the reverse—that they had proof he was the person who robbed the Bank—that then Lyon turned pale, and asked for a glass of water—this natural effect arising from as unjust charge, is considered by the defendants as proof of guilt—strange inconsistency! The apparent or assumed agitation of Cunningham, leads them to consider him innocent, whilst the natural agitation of Lyon prove his condemnation.

Permit me to turn to another fact ; you have in the
ny of Mr. Ralston, an account of an attempt to rob t
on the 4th or 5th of August about 3 or 4 weeks befor
tual robbery took place, the discovery was made b
one of the porters who had often found the door lea
to the alley open, and once the front door unloc
a stick placed behind to keep it too. The violent effc
the cash-vault at that time says Mr. Ralston must h
persisted in some time, he believed the porters had
of the front door—Now who were the porters at th
Potter was one and he made the discovery, the ot
Cunningham ; the whole affair was kept a profoun
between Potter (who is since dead) Mr. Smith t
ier and Mr. Ralston. If a prosecution had been c
ced against any one for that attempt, I presume it wo
been against Cunningham, and though I will not say
testimony would convict him, without some additional
tances, yet I am confident it is solid ground to suspe
much stronger ground than the defendants had t
Lyon.

What do they alledge as the ground of their s
against Lyon—three things.—1st The doors were
him to fit up.—2d what Mr. Annesley heard a strang
the street respecting Lyon's having been in town
that he turned pale and asked for glass of water at S
Now let us examine them—Lyon is by trade a black
in that capacity was employed to do such work for th
it does not appear that this work was of his seeking,
the testimony of Mr. Robinson he appeared to be in
about it. The Bank employed him because he c
their work as well as any body else, or perhaps be
this shall be a good reason to suspect and ap
workmen, the Bank will find it difficult to get any
to do their work. Would the bare circumstances o
had the doors in his possession, be sufficient to conv
No, it is not ground even for suspicion—Because yo
piece of work of this kind to my shop, and your h
afterwards robbed shall I be considered as the rob
would be the height of injustice.

But they say he kept the doors an unreasonable l
time and Mr. Robinson gives us that opinion—I
Mr. Robinson knows no more about iron work of th
than he does about building the capitol at Rome—
have been Mr. Robinson's opinion, but it was a rash

not made up on a knowledge of the circumstances of the case—Mr. Robinson is a carpenter, and he said he could do the iron work that was done to those doors in a day, and yet he had never done any wôrk of the kind, an opinion of this sort, will have no weight with an enlightened jury, yet it appears that the work was done in a day and a half, & Mr. Lyon had at that time only an apprentice boy to assist him in his shop. It is said that Owen did other doors in less time, that he took them on Saturday and returned them on Monday, the difference, in point of time, is very inconsiderable, & Robinson tells you Owen worked on Sunday, but Owen had less to do to the doors than Lyon had. Why was not Owen prosecuted for robbing the Bank as well as Lyon. The Plaintiff did not seek this work, and when he was told the business was urgent he did not court it, on the contrary, he says to Robinson: damn your work take it away—if he was preparing false keys as they would insinuate, he would have spoken more mildly and offered some excuse.

The testimony of Mr. S. Wheeler amounts to nothing more than to shew that the lock he had been requested to examine, was one that had been taken apart since it was finished, and before he saw it great stress appeared to be laid on this gentleman's testimony, but it amounts to nothing—for we admit that the lock had been opened by Mr. Lyon, and the latches taken out by him in consequence of instructions from Robinson on the first removal of that lock to a vault door in the Bank, whilst it was kept in Lodge Alley. The jury will recollect that Mr. Lyon produced the latches so taken out and offered to replace them, if the lock was produced, but strange to tell, we were not indulged with the sight of that lock, although the president affected to go down to the Bank and bring it into the court, in consequence of the request of his honor Judge Yeates; he did not however bring it, but he brought two others with which Mr. Wheeler's testimony had nothing to do. Whether this mistake arose from error or design, is not said, but it is of a piece with the rest of this prosecution—the defendants continue to the last their play of cross purposes.

Let me ask why could Mr. Lyon desire to keep these doors in his shop, he did not know that they were intended for the cash-vault, and without this knowledge there detention was useless: but I have already observed on that point, is there any thing in this first ground which they alledge for

their suspicions, that can justify the commitment of Mr. I
on to prison, and detainig him there 12 weeks.

The next ground is that Mr. Annesley heard a conver
tion in the street, in which it was said that Lyon had be
in town the day before the robbery was committed. N
gentlemen shall the sayings of any unprincipled blackgua
in the presence of a Bank-officer, be considered as go
ground of suspicion, much less of imprisonment ; but the r
sult of the enquiry which this loose conversation led
ought to be a warning in future how people suffer th
minds to be influenced by every idle tale they hear.

When Mr. John Boyd, who was reported to have said
had seen Mr. Lyon in town, comes to be enquired after,
appears not to be the man alluded to—he knew nothing
Mr. Lyon, and Mr. Annesley abandons the whole as
mistake—yet Mr. Lyon was kept in prison for seve
weeks upon this groundless suspicion—Only let a man s
that he saw any of you gentlemen of the jury about the Ba
the day before it was robbed, and you may be committed
prison and at the expiration of 7 years, it may for the fi
time appear that it was a falshood which had been repo
ed. When the defendants set up a defence of this natu
they fail in their justification, they issue their warrant
the apprehension of Lyon the 2d of September, and t
grand discovery is made by Mr. Annesley the day aft
This is a most shameful and barbarous mode of proceedi
they first punish, and afterwards seek proofs of criminal
against the trial shall come on. They had better give
the cause than defend it in this way—It would save t
court and jury some trouble and to themselves somewh
of their own honor—this point however had nothing to
with the commitment.

We will now proceed to enquire whether any thing wh
took place at Mr. Stocker's authorised in the slightest deg
the commitment of Mr. Lyon. What past there Mr. Wh
ton has been called upon to relate—he recollects but
tle, and little enough it is God knows, you must have
served how cautious he was in giving his testimony, depe
ing for his excuse in what he was inaccurate upon the trea
ery of his memory, and you must credit what he has
ted positively with some grains of allowance ; the long
riod which has elapsed since the transactions took pl
must render it more difficult for him to recollect, espec
as he has been engaged in such a multiplicity of busi

since—But the circumstances on which Mr. Wharton relied for recommending it to Mr. Stocker to commit Lyon to prison, was because Lyon told a straight story of his travels from the City down to Lewistown and back again—and because he turned pale when he was assured they had proof of his guilt. The straight story told on that occasion by Lyon has proved true in every part, and the circumstance of his turning pale, was not a just symptom of guilt, for he has been proved to be innocent—a mistaken opinion therefore in Mr. Wharton, cannot operate as a justification of Mr. Stocker for committing Lyon without some other proof of his being criminal.

The straight and well connected story told by Lyon, of his adventures day by day, was in my mind a mark of conscious innocence, if it was a fiction they had the clue to discover it; and if he had been found upon enquiry to have fabricated the story, it would have laid some ground for suspicion—must a man's life and liberty be sported with, because he tells a straight story; or because his sensibility expresses his feelings by a change of countenance on being charged with a crime which his soul abhors. I trust gentlemen, we have a better system of municipal regulations and criminal jurisprudence—If Lyon had robbed the Bank of 160,000 dollars, and had the money he would not certainly have pursued the course you find he has taken, and returned voluntarily to remove such suspicions as might be entertained of him. Seven years are now elapsed since he told the straight story of his adventures, but nothing is offered to shew that he told a falshood in the slightest degree. They may say that a man may have some design in being so particular: that does not appear to have been Lyon's case; for he gave them all the satisfaction any reasonable man could desire.

Mr. Lyon was however, called to a second examination, what was his conduct there? He is asked for his suspicions, as to who might be concerned, he tells them all that took place while the doors were at his shop, that being all he knew, and those suspicions with respect to one of the parties proves most true. He tells them that Robinson came to his shop while the doors were there, and examined the lock most closely, after the two had left the shop together, the stranger returned alone, but he did not tarry, Lyon was answering a young woman at the shop door, while the stranger was in the shop. He adds that while he was at the Bank, hanging the vault doors, he saw this young man

(Robinson's companion) again, who appeared to be very familiar with the Banking house, as if he knew every part of it. He told them to go to Robinson, and let him tell who that stranger was. But neither Mr. Fox nor Smith would take his meaning; the young man was said to be a worthy person; though it has since been found out that he was one of the robbers, namely Isaac Davis. These gentlemen would see nobody but Lyon, it appears to me that they had determined *guilt* and *Lyon* to be inseperable, or why did they after they discovered Davis, continue to hold Lyon in prison and afterwards to bail. One would think that Lyon was innocent after he had given the Bank officers the clue, that however was not their way of thinking. But it may be asked how came it that Lyon suspected Davis, he assigned a substantial reason for his suspicions. He told them that about the 20*th* or 22*nd* of August he saw Robinson & his companion sitting at Market street ferry: just as he turned round the corner he saw them, they appeared greatly alarmed at the sight of him, more so then he had ever seen any person in his life, they stared and looked confused at one another therefore he did not go near them, but they observed Lyon saw the confusion of their countenances, and entered into some trifling talk with him to divert his attention. He soon left them and after buying some peaches at a boat laying at the ferry he went home, and told his apprentice boy that he had seen Robinson and the stranger at Market street ferry, who was in our shop while we were doing the iron doors, they seemed to be in a deep study, and he did not believe they were after any good.

It is to be presumed and such I believe to be the fact, that after hearing of the robbery he might have dropped the same idea to some of his acquaintance while at Lewistown, and the Bank directors having heard he entertained some suspicions occasioned the second examination—And it will not be unfair to say, that this communication on the part of Lyon, gave the cashier the idea of watching Davis's money transactions, which ultimately led to the discovery of th robbers, and the recovery of the money. Every man v find a ready apology, in the respect which is due to anot character, why Lyon did not voluntarily on his first e: mination, mention his suspicions of either Robinson or Da He had learned at Lewistown that the Bank was robbed several persons taken up—He asked Mr. Hunter if S. R *inson was taken* up (this to my mind shewed in part in w

direction his suspicion pointed) Mr. Hunter could not tell, but added, that all the persons who worked at the Bank were suspected, on which Lyon asked if he was suspected, and being answered in the affirmative, he immediately sat off to meet the charge, he travelled on foot from Brandywine, and when he got to Mr. Stocker's he found Mr. Stocker was absent, he asked for a lodging there, but could not obtain it, he returned again the next day, and after waiting some time he was questioned before some of the first men in our country—One of them Mr. Smith the cashier, the gentleman who never swears—told him that they were *certain* he robbed the Bank and they had *positive proof* of it: hearing this asserted by that gentleman, whose moral character was attempted to be established here by a cloud of witnesses, Lyon must have been hardened indeed to doubt the solemn declaration—he knew himself innocent, but he supposed some adandoned villain might be found in this country (as has often been the case in Europe) to swear positively to the truth of the greatest falshood, and the reward being so large might raise the temptation.

In all these circumstances what ground is there for probable cause of suspecting Lyon—there is none. Shall idle rumour and ridiculous suspicions lay the foundation of guilt. When the law speaks of probable cause, it must be understood to mean, such cause, as would be sufficient whereon to ground a criminal prosecution. The probable cause must be commensurate to the proceedings founded upon it. Was Lyon standing before you on the charge of the robbery of the Bank, would any of these circumstances justify you in ordering him to be confined in jail—they certainly would not—but when every thing in the case is wiped away, by the discovery of the robbers, and that through Lyon's superior penetration and judgment, would you still keep him in confinement to the injury of his health and the ruin of his reputation? would you charge him before a grand jury with an offence of which you were certain he was innocent? would you make such insinuations and misrepresentations concerning him to a Committee of the Legislature as must inevitably by being placed on their Journals go down to posterity branding him and all his race with infamy? and after all would you refuse to acknowledge your error or mistake and defend yourselves in this Court to the extreme verge of the gulph of injustice and insincerity? If you would do these things you would deserve to be forced by a jury of

more just and upright men to make compensation to the Plaintiff in a much higher sum than that in which he has laid his damages. But the defendants in this action have done all these things and you are that upwright and independent jury to whom he appeals under the laws of his country to render him all the retribution in your power.

Mr. Hopkinson, went on remarking on the other parts of the testimoney, to shew that the examination before Judge Shippen, Mr. Fox did not make a candid statement of the facts, and therefore the defendants, are not entitled to any benefit from the Judges commitment, for if he had told the whole, the probability is that the Judge would have discharged Lyon. The jury will judge of this, they have now heard all the material facts, and must be satisfied that all were not disclosed either on that examination or the examination before the Supreme Court.

In the imprisonment of Lyon, the constitution was violated. Mr. Stocker as an Alderman of the City had no power to act in the County—If he had, he could not legally commit him, but on a charge made upon oath—for the *9th*, Article of the *8th*, Section declares, " that the people shall be secured in their persons, houses, papers, and possessions, from unreasonable searches and seizures: and that no warrant to search any place or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause, supported by an oath or affirmation."

This is a point of great importance to every person in the Commonwealth, the Constitution is the security we have for our rights and liberties and if its barriers are to be broken down every time a Bank is robbed, the same may be done whenever an individual is plundered, and every man who another chuses to suspect may be committed to prison without being charged on oath, or probable cause of suspicion being shewn, and that by a person not having jurisdiction in the City or County where it was committed.

Mr. Hopkinson, mentioned the case of a search warrant issued by Lord Holland without oath where an English court and jury gave 1,500 pounds sterling damages, although no person was injured by it, the reason was, merely, because they considered it a violation of the right of an Englishman to be safe in his own house, and in this Country shall the violation of a citizen's personal liberty be less. I' *the case of Huckle vs.* Money in 2 Wilson 205 when t'

defendant was falsely imprisoned only 6 hours the jury gave 300 pounds sterling, damages. Two other cases were added one of 1500 the other of 4000 pounds sterling being given in damages for similar injuries; but it is not in England alone that juries have repaired the grievances of those who have applied to the laws for redress: it must be in every ones memory, for it is but a few years since, in the case of Doctor Rush *vs.* Cobbett, a jury gave 5000 dollars damages and the court confirmed the verdict, that was for a lible in a newspaper, by no means of such a magnitude as the aspersion put on Lyon's character: nor in that case was the complainant confined in prison; but Lyon was confined a great portion of the time in prison without a legal warrant, or an oath to warrant the magistrate to commit him, Lyon was illegally confined from the 21*st*, of September till the 29*th*, of October without any shadow of cause, and in despight of the constitution.

Had he been confined in the parlor of the jail though it might have been less injurious to his health, he would be entitled to all the reparation he has claimed by this suit. But when you consider the manner of his confinement the yellow fever raging in jail, his friends denied to him, generally; at one time confined in a solitary cell, where he was so excluded, that he might have perished; the grateings of the door were not more than an inch apart so that nothing but a slice of bread or water through the spout of a tea pot could be given to him; at another time confined among convicts, felons, and vagrants—these indignities deserve some retribution.

Mr. Stocker, himself mentions him as a man of good character, and recommends him to others as such. The other witnesses speak of him as a thriving laborious and industrious mechanic, but by his imprisonment his business was broken up, and on his enlargement, he was unable to re-establish it by reason of the injury his reputation had sustained. The defendants are responsible for the whole of his losses and sufferings, for they are the occasion of the whole. With this observation I conclude and leave the case with the jury. That those who inflicted such miseries and sufferings upon Patrick Lyon, an innocent man, and a man above suspicion, should be obliged to make him full *pecuniary* recompense they are well able to pay money for their misconduct, and I hope the jury will take care that they shall do it to the amount claimed.

MR. INGERSOL.

I agree perfectly in the sentiment expressed by the learned counsel who has preceded me, that no person is so high or elevated as to be above the control of the law, nor none so low or depressed as to be put out of its protection; but let me add, that our prejudices ought not usurp the place of reason; nor should our passions be appealed to, instead of our judgement. Gentlemen, if you have heard any malignant whispers abroad, you must divest yourselves of them for they can have no access within these walls. You are to try the cause upon the evidence and the laws of the land as it bears upon that evidence. To that I appeal, if it be against my clients let it take its course, but if it be in their favor I ask nay I require your verdict in conformity.

The Bank of Pennsylvania was robbed in the night of the 1*st* of September, of a large sum in specie and bank notes, according to appearances, we all concur in this sentiment that if the doors were locked (of which we entertain no doubt) they were opened by the means of keys, genuine, or false. Several persons were involved in the suspicion, Patrick Lyon was one of that number first as principal and afterwards as accessary. He was examined, committed, brought before a judge, remanded and brought before the supreme court. When he was before the judge at his chambers, he not only had an opportunity of telling his own tale, but was also defended by counsel. That the judge considering, there was probable cause for the proceedings had against him, in a mild manner, advised Mr. Lyon's counsel not to insist upon the objection, he had taken, on the ground that his client had not been charged upon oath: because if he did, and even if it was well founded he would give time to the prosecutors to procure a legal commitment. Next Mr. Lyon was brought before the supreme court when all the Judges were present, after a full hearing on both sides, by the parties and their counsel, the *Court* were of opinion, that the circumstances of the case were such, that the business should go on in the usual mode of prosecution.

It is something peculiar that there should be brought an action for a malicious prosecution, when on a hearing before a magistrate strong suspicions were entertained, and which were not removed by a second examination, before the same *magistrate*. In the third instance Mr. Lyon was brought

before one of the judges of the supreme court, where on an examination upon oath, that judge deemed, there was so much ground for the suspicion, that though he lowered the amount of the bail to 6000 dollars, he remanded him back to prison, and in the fourth place; when Mr. Lyon was brought before the whole supreme court they gave it as their opinion: that the business should continue. I say this action is a great novelty and without precedent.

That the subject may be better understood, I will divide my observations under two heads.

1*st.* Did the defendants prosecute the plaintiff on this charge falsely and maliciously. It will be impossible for you to apply the evidence or the arguments unless you know the questions you are to decide by them.

2*nd.* Was such proceedings without any reasonable or probable cause?

I believe I repeat the words of the plaintiff's, opening counsel, they are bound to answer in the affirmative to these questions, for unless they can shew that the defendants have prosecuted the plaintiff falsely and maliciously without reasonable or probable cause, they do not make out their case. The question is, not whether their suspicions were well or ill founded, if they were false and still not malicious it is not sufficient, for malice is the true characteristic feature of this action—without proof of malice it cannot be sustained.

The plaintiff's counsel cannot find a precedent for their client's case, and therefore they make one. They ask you to overleap all the settled rules of practice in order to get at this case, which they would not ask in another. Confound not, I intreat you, what ought to be kept separate; let the object be understood and the determination will be no matter of difficulty. We are not trying the plaintiff's innocence or guilt, the cause is confined to a narrower sphere. The circumstance of malice in the defendant's inducing the the prosecution of Mr. Lyon. There cannot be imputed any malice on the first examinations which was voluntary on the part of the plaintiff, You have heard something said by the plaintiff's counsel like his having put into the hands of the defendants a clue that would lead to the detection of the criminal; how came he possessed of that information? Let his counsel answer that question—It was ingeniously said, that something in the countenance of Davis, struck Lyon, as in-

dicating villainy; you have all heard of Lavater, he undertook to create a system, by which, to distinguish the moral character of a man from the features of his face upon a particular examination; but the plaintiff exceeds him, he from a slight view, can not only fix the character of a man, but, the particular transactions of his future life, he can foresee the robbery of the Bank, before the fact has taken place! He was possessed of information before his first examination on the 21*st* of September, but there does not appear a word at that time hinting to the defendants, who were the robbers.—Why not? We are told that these officers of the Bank shut their eyes against the light, and refused to prosecute the criminals, that they may have room to prosecute the plaintiff. Why did not the plaintiff open their eyes when it seems he came up from the Capes of Delaware to do it, in order to clear himself of suspicion? He appears to have stood the examination till he was convulsed, and yet he does not let drop a syllable to the defendants which would induce them to look to another person; he was the sole depository of his own secret; we hear as yet nothing of his suspicions of Robinson, no description of Davis as his companion.—How happened it to come out on the second examination.

He tells Haines he has a discovery to make, you have it in the testimony of Lace, that Haines told him so, he was, in consequence taken out to make the discovery, but you find the opinion Haines intertained of it; for in answering Lace's question, what the information was? He answered, "he has been trifling with us." What the plaintiff said in his examination on the 21*st* of October 1798, for the first time, hints to them, in as dark language as the oracles of old. He told them to ask Robinson, but as to what, he is totally unintelligible. The defendants were satisfied that there was nothing to be got by that enquiry, but what they knew already.

Now, let me ask you, to take a perspective view of these transactions in the order of time in which they took place In the first place, the Bank is robbed of a great sum of money, and no appearance of violence on the vault in which the money had been kept. Consider, that vault had two doors each door had a lock, and each lock had a key, (one lock however would be enough for my argument,) the locks cannot be picked, the vault could be opened only with the keys or by violence, one, or the other. The extravagant *idea has been* set up, that the officers trust the keys of

money vault to other persons. But before I have finished I intend to shew that the vault was opened with false keys; and those false keys must have been made by somebody, either at the shop of the plaintiff or elsewhere. I establish it as a leading position, that the robbery was effected by false keys to the money vault, no person could make those false keys without an opportunity of possessing the locks, or the keys. I consider this, as the first prominent feature of the cases. The learned gentleman who proceeded me has attemped to shew that the doors of the vault were opened with the keys of the institution. I shall shew that suggestion to be false, by shewing that both the keys were taken away, this point, established, it follows of consequence, that the vault was opened with false keys. But it was suggested as possible that the doors had not been locked; so that neither true nor false keys were necessary in that event. How are we to prove the door to have been locked but in this way, Mr. Sandford says, it was the constant habit of the cashier & teller to see the vaults closed; he did not see them closed himself, because he went away before the Bank shut. That it was usual for the cashier to take one key and the teller the other; from this, we have every reason to suppose that the doors were locked at this time. The gentleman has involved himself in an inconsistency, he says, the locks were left open, and yet, he supposes the keys were also left with the porter. That measure would be altogether nugatory. But suppose the door locked, the question still recurs, how was the vault opened? We hear of no marks of violence; then it must be done either by the true, or the false keys. We will not rely solely upon its being the habits of the officers to keep the keys, we have it in testimony from Mr. Annesley, that, on Saturday evening he took one key home with him, and he saw the cashier put the other in his pocket at the time they left the Bank, the one he took home with him, he hung it up in his parlor, and it was hanging there on Sunday morning.

MR. DALLAS.

The witness never gave any account of that key as to where it was on Sunday morning.

MR. INGERSOL.

He said he took it with him to Smith on Sunday morning.

JUDGE YEATES.

He said he hung it up in the parlor over night.

MR. DALLAS.

Yes that is true, but he said nothing about seeing it in the morning, for on the cross examination, I asked him particularly on that point, and he answered, that he hung it up in the parlor in the afternoon on Saturday, and returned it to Mr. Smith in the afternoon of Sunday.

MR. INGERSOL.

I am content to take it in that way, now I ask when Annesley says he hung it up in the parlor on Saturday and gave it to Mr. Smith on the Sunday afternoon, if he means that it was any where else during that period, he his guilty of suppressing a part of the truth, which is little short of purjury ; but the fair inference is, that the key remained where he left it, and where he found it. You know Mr. Annesley to be an upright man, would it not however be a vile trick in any man to make such a mental reservation as the opposite counsel has insinuated, namely that he took the key down and gave it to Cunningham who returned it to the place it hung on the Sunday morning. If this is not meant, why did he make such a particular enquiry. Taking it for granted that the key remained hung up from Saturday afternoon until Sunday afternoon, what is the inference ? Inevitably that the lock to which that key belonged was opened by a false key.

JUDGE YEATES.

On my notes I find Annesley says I kept the key hung up in the parlor from Saturday afternoon until Sunday, it was never out of my possession.

MR. INGERSOL.

He kept it hung up in his parlor from Saturday afternoon until Sunday it was never out of his possession : then, the fact is established without doubt, that the vault must have been opened with false keys, for the other key, Mr. Smith put into his pocket, & went with it to his family in the country, *you must* presume it remained with him, unless it was

taken from his pocket by some art or conjuration, which you will not suppose. Having fixed this point to an absolute certainty, we have obtained the first link of our chain.—This is the ground on which I build the whole superstructure, what then becomes of Coldwater's story? viz. if the theives were found out it would appear to have been done from within. M'Aninch says, if they had been more careful of their keys, the Bank would not have been robbed.

JUDGE YEATES.

Yes, Coldwater said the same thing after the Bank returned from Germantown.

Mr. INGERSOL.

It is clear that Coldwater is mistaken as to the key he saw with Cunningham, because that appears from the testimony on all quarters, to be the key of the front door of the Bank. Thus we have advanced one important step, by proving that on the night of the robbery the two keys were safe in the custody of the proper officers: one in Mr. Smith's pocket, the other hung up in Mr. Annesley's parlor, and you will recollect that neither of the locks could be picked, they must then necessarily be opened with false keys.

If I have proved that the locks were opened by false keys, then I ask, to what suspicions does that fact fairly lead? In the first place, you find the plaintiff spoken of as an ingenious lock-smith, conversant in business of this kind; he gives his opinion upon one of these locks, and says, it is a patent-spring-tumbler lock which no man in America could pick; second, he had the door from Thursday till Saturday to shift the locks in the manner described; he had time sufficient for opening these locks. I do not know that the keys were there, it is immaterial whether they were, or not: because, any man acquainted with the business of lock making can make the keys from having the locks alone before them; nothing is more frequent then to have new keys made for locks, when the originals are lost. The Bank were dissatisfied, that he kept the doors so long, Robinson mentions it as an unreasonable length of time, and says though he is not a workman in that business, he thinks he could have done them in a day. The other doors were carried to Owen on Saturday and returned there on Monday. I cannot say which required the most work, but it appears that Owen used such

expedition as gave satisfaction. These circumstances would naturally lead, (when it was discovered the Bank had been robbed,) to suspect that false keys had been procured for the purpose; this idea will be confirmed when we come to the testimony of Robert Ralston, who informs you, an attempt to open the door of the cash-vault by force had been made some weeks before: but that mode seems to have been abandoned when there was an opportunity of procuring false keys. If the Plaintiff made them for Cunningham, the porter of the Bank; he might have done so, without knowing that any improper use was to be made of them. I refer it to your candor, whether, under all these circumstances, you would not have come to the conclusion that the keys were made in the Plaintiff's shop, and no where else; he had the doors and that furnished the only opportunity. Were these circumstances conjured up at the time, out of malice, or ill will to Patrick Lyon. No; they were positive facts, and naturally led him to be suspected; he was the only person who had the opportunity and ability to make false keys for the locks of the cash vault doors.

You all know that suspicion may fall upon an innocent person, and he may be subject to the inconvenience arising from it, but the person who entertains the suspicion may have not ill-will toward the suspected, and so the defendants appear to have acted upon the impression of the moment in committing the plaintiff to prison.

It is said their suspicion was unfounded, and that the grand jury manifested his innocence by returning the bill ignoramus; which gave the *lie* to the charge, I shall not say to the contrary at present; but their return of the bill only shews that they acted upon circumstaces not known at first, and not on those alone which led to the suspicion. The indictment was returned 12*th* of Jaunary, 1799. Had the grand jury been impanelled in September 1798, immediately after the robbery, could they have refused to say there was probable cause to suspect the plaintiff; or would they have said that the defendants in order to exempt themselves from the disgrace of having trusted the keys to Cunningham, prosecuted a man they had no reason to suspect. For such conduct, what motives could the defendants have but those of a *demon*; for my part I can conceive of no othe I knew my friend's (Hopkinson) compliments on the h mainty and gentleness of the character of the defendants be true; but I apprehend the reference made to their gene

al character is only as a foil to set off in a stronger light the rancor and malevolence they are supposed to have displayed against this particular man. It is impossible they could act so from the circumstance of trusting their porter with the keys, for they did not trust him on the night of the robbery: but, if this was true with respect to the officers it could not affect Mr. Stocker who had nothing to do with the keys. Besides, it is admitted he was the friend of Lyon, would he join with others in hunting down this man as if he was a wild beast, and ruining him in his property, his business, and his reputation. Mr. Stocker recommends the plaintiff to work, employs him himself, approves of his workmanship; surely this is no proof of malignant passions possessing his heart, but the very reverse.

It had been said that the defendants would not turn their eyes to Cunningham; how is this? Cunningham undoubtedly acted his part so well as to elude the suspicions of Mr. Annesley on Sunday morning, as well as those of Mr. Smith. But it will be recollected that Cunningham sickened the next day, and died 5 days after. They knew they had Cunningham within their reach from Monday untill he expired. If they had pursued him and confined him in prison it would have furnished my friend with a pretty occasion of making a pathetic speech, on the sufferings of the sick man, and hurrying him prematurely to his grave by their prosecution.

There are several circumstances in the testimony of Coldwater that might have been useful to the Bank, if they had been told whilst Cunningham was yet alive, such as that of borrowing the watchman's lamp while there was plenty of candles in the house. But nothing was cummunicated to the defendants, that could lend to a discovery; they found Cunningham at his post, and it could not be imagined he was an accomplice in a robbery of such extent, without the money being concealed in the Bank, a thing almost impossible for him to effect.

We now come to Davis, Mr. Robinson says, he was seveal days skulking about the Bank, but this does not prove him a confederate; though I am willing to allow, that he might have been then forming a plan to rob the Bank, but nothing that could induce a suspicion of him was known to the defendants. Are they to blame for not looking that way? The plaintiff had only mentioned Robinson, there was nothing to shew that Davis was suspected by any of the officers of the Bank at the time.

MR. DALLAS.

He was an acquaintance of Robinson's and also intimate at the house of Mr. Smith.

MR. INGERSOL.

No suspicion was entertained of Davis by any one engaged in this cause, but the plaintiff, and if he was possessed of any secret he kept it to himself, he gave them no information. Place yourselves in the same situation with the defendants, would it be fair that you should be thought to act from malice, when you only intended to obtain justice, you are not to argue from subsequent events, but from the circumstances known at the time ; If you take the other course, you introduce a new law, the worst of all possible retrospective laws, worse than any *expost-facto-law* forbidden by the constitution.

The directors of the Bank drew a fair inference when they determined to follow this course. They knew that the keys were in the possession of the proper officers, the Cashier and Teller. If they knew that Cunningham opened the vault they knew also that he must have done it, with false keys, and they also knew that Cunningham could not make them himself therefore, they must have been made by somebody else. With regard to the plaintiff in this case the officers of the Bank had no particular knowledge of him, of course they could have no private animosity against him: if they had probable cause from the information of others to suspect him, it is sufficient for their defence.

It was suggested that the attempt mentioned by Mr. Ralston to force the door of the cash-vault in Lodge-alley, was done by Cunningham, allowing that to be the fact, what is the inference, that Cunningham was not entrusted with the keys, for if he was intrusted with them, it would not be necessary to open the doors by violence. They had not the true keys then, but afterwards at Carpenter's-hall, after the doors had been part of three days at the plaintiff's shop He opened the doors, with keys that answered the purpo as well as the keys of the institution. I conceive I sta the matter perfectly right, and the inference is, that Cunningham opened the doors as is proved with false key the plaintiff it is probable, could not be innocent as no pe son but himself had the opportunity of making them. Th

must have been made at his shop, and if made there, it must have been with his knowledge, he must be directly or indirectly accessary to the fact. On this ground which they had before them, it was resonable for them to proceed as they did.

What has been said respecting the warrant being issued without oath, and the irregularity of the commitment I shall not notice here, because it is nothing to the present case. It might have been remedied by an action of trespass.

MR. HOPKINSON.

I mentioned it, as evidence of malice.

MR. INGERSOL.

The counsel had no right to introduce it here. I will pursue my argument. A warrant was obtained, and Annesley and Cunningham went down town to the plaintiff's shop and to his house, in the key-hole of the door, they saw a cob-web which with the information of the neighbours satisfied him the plaintiff had not been there for several days. But this does not remove the suspicion, because the suspicion was that he had been accessary to making the false-keys. Indeed it was cause to increase the suspicion, for it might be suspected tha. he had taken this stept in order to evade being suspected of a confederacy with the actual robbers. We are farther told of the ridiculous rumor at a corner of a street, heard by Annesley; at this day it may be considered as ridiculous but take it up in the order of time in which it occured, and there is no redicule attached to it; Mr. Annesley enquires who had seen Lyon, being informed it was Boyd the Bricklayer, he informed the Directors and went in search of this witness to West-Chester. Here is a laudable desire to obtain testimony, which is no mark of malice. The plaintiff had returned to town before Annesley came back it was necessary afterwards to pursue the enquiry thus commenced.

It is said that the officers of the Bank had no right to consider the plaintiff with the eyes of suspicion, because he did not know in which Vault the cash was deposited. If he acted in confederacy with the others it was not necessary he should; by making the false keys which gave Cunningham access to the vault, he had done his part.

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Some others are mentioned, to fix a malicious disposition in the defendants, towards the plaintiff; they not only refuse to prosecute Cunningham who was guilty, in order to prosecute the plaintiff, who is innocent: but further, they let Davis escape and decline proceeding against him. They introduce a witness to prove that Haines saw Davis in the street a few years ago, and might have taken him up but did not. Mr. Smith consults with Mr. Wharton of the propriety of taking such a step, and Mr. Wharton by his testimony shews that Davis was not suffered to be at large out of malice to the plaintiff, but on account of the free and entire pardon promised in the Governor's proclamation of the 4th of September, 1798. Davis having complied with the terms held out therein. Is there any thing grossly exceptionable in this. I acknowledge it ought not to be the act of an individual to pardon an offender or intercept the course of public justice. But the power exercised by the Govenor is vested in him by the constitution. The officers of the Bank told Davis if he would declare who were his accomplices and deliver up the money, they would endeavor to get a pardon for him. He said there was no one but Cunningham concerned with him; this might be true, but it does not follow, that Cunningham was not concerned with the plaintiff or somebody else, in procuring the false keys. The defendants having given their solemn promise to Davis to endeavor to procure his pardon, they could not violate it as men of honor, so said Mr. Wharton, and so every other man of honor will say. This is mentioned as a mark of malice! It is nothing more than the conformity of an honest man to the word he had pledged under the authority of the President and Directors of the Company.

I have traced the conduct of the defendants towards the plaintiff, down to his appearance on *Habeas Corpus*, before Judge Shippen, after which they they took no part in any way. From the testimony of Mr. Lace, you find circumstances of friendship, Mr. Smith, appeared to be friendly when Lace first conversed with him. Mr. Stocker points out the mode to be pursued to obtain a *Habeas Corpus* he mentioned Judge M'Kean and Judge Shippen, he gives directions where to find the latter on the Ridge-road, Stocker said he should be glad to serve him in any thing consistent with his duty. The offensive words attributed to him were used after the plaintiff had been before Judge Shippen, and

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hould be glad to serve him in any thing consisten duty. The offensive words attributed to him we fter the plaintiff had been before Judge Shippen,

and was a consequence of the plaintiff's threat to beat or flog him. Under a view of all these circumstances, it must be a forced construction indeed, to say, that either of the defendants acted upon motives of malice or malevolence.

Having now examined the circumstances which fall under the first head of the division of my observations, I shall proceed to the second.

JUDGE YEATES.

It is now late, and this will be a proper time to adjourn if the argument is intended to be lengthy.

MR. INGERSOL.

I have much to say on my second point, and some authorities to refer to.

The court then adjourned.

Tuesday, December 17.

MR. INGERSOL *in continuation.*

I presume, gentlemen, to ask no favor, I expect the decision of the law, whether we are right or wrong, that alone ought to decide. My question is, whether the proceedings charging the plaintiff with felony, were instituted with reasonable or probable cause. The affirmative of this question you must affirmatively find, or you must acquit the defendants. It is therefore superfluous to analize the volley of oaths attributed to Mr. Smith, because if there is probable cause to suspect the plaintiff it will be a justification. I will, however, make one observation upon the abandoned words of Mr. Smith, as the opposite counsel have laid so much stress upon them. No man becomes wicked of a sudden—yet Mr. Smith is said to have taken in vain the name of his Maker in a conversation with his barber: Now those who have known him from his infancy to middle age, who have seen him in all situations through a long course of life, tell you they never heard a harsh or indecent expression escape his lips—Except Mrs. Pendergrass who says she has heard him curse his servant lad. Mr. Rizer is the only person who ever heard him swear. We have heard much of the situation of Mr. Rizer the barber; that he was at death's

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door, and would not expire with a lie upon his lips. The weak state he was in when he gave his testimony, would give rise to a suspicion that he might adopt the phrase from the person who drew up the affidavit, for he acknowledges that it is so long ago that he forgets a good many things. Suppose a man was to say of a friend or an acquaintance, that he swore on a particular occasion in the manner stated in Mr. Rizer's deposition, would you not say it is impossible—I have known him long; and have had frequent interviews with him, but I never knew him intersperse his conversation with such profane language. Would not you think that an error in this particular ought to destroy the creditability of the whole story. Is it not contrary to all experience that a man should have two such different characters? Profanity and morality are rarely united in the same person.

From the tenor of the testimony of all the other witnesses, it is clear that Mr. Rizer must have been mistaken.

Another witness is introduced to implicate Mr. Smith as being guided by malice. T. Cave says, Smith told him it was nobody but Patrick Lyon who robbed the Bank, that it was certainly him, for he had the doors and locks in his possession sometime before the robbery. Am I in a court of law, which is guided by settled principles, or are the rules of evidence like a nose of wax, to be turned every way to answer a temporary purpose. Shall it be considered a proof of malice that Mr. Smith speaks of a moral certainty, that Lyon was implicated in the robbery when he assigns the reason. Malice must arise from acting against the conviction of his own mind. I do not recollect when the conversation took place.

[Mr. Dallas said it was the Thursday after the robbery.]

But I will tell you what I do recollect—That Mr. Wheeler was called in November to examine the lock upon the door of the cash vault; he is a smith and a man of intelligence in his way; and of unimpeached character in private life. He tells you that the lock had been taken asunder, and evidence is before you that there was no other opportunity for doing this, but whilst the doors were at the plaintiff's shop; that the lock had not been picked, but opened with a key.—This is a confirmation of the suspicions previously entertained. The opposite counsel need not exult in the offer of the plaintiff to replace the latches, because that only proves *he had opened* the lock. and of consequence that he had had *an opportunity of* making a key to fit it. To say that th

confidence with which Mr. Smith expressed himself to Mr. Cave is a ground of malice is a novel doctrine, and if adopted here, will change this court of law into a legislature. This court and jury are to say what the law now is, and not to make a new law to suit the present cause.

The same may be said, as to what Lambert Smith said Haines remarked to him; it only goes to shew that Haines still thought the plaintiff had as much to do with the robbery as any other person: but this is no proof of malice.

Recuring to the warrant issued on the 2d of September, the regularity of which has been complained of, I need only remark that under that warrant nothing was done, it was an inefficacious paper; it was put into the hands of Annesley and Cunningham, who went down town to the plaintiff's shop and house, not finding him, there it died.

You were told of another circumstance to prove malice, viz.—that Haines had the warrant, and was directed to pursue him. On this point we are precluded from shewing the course of proceeding, for they have made a defendant of Haines, and thereby stopped his mouth, and deprived us of the benefit of his testimony.

It has been repeatedly said that nothing was done in respect to Cunningham. It appears he was taken sick the day after the robbery, and died in five days: on the 12th of September they searched his house under a warrant from Hilary Baker, the mayor, on the first day of the robbery he so acted toward the officers of the Bank, as to prevent suspicion attaching to himself; but you see he did not escape altogether. You will observe that it was after the death of Cunningham that the plaintiff returned from Delaware. If he had heard from rumor these things of which we have no proof but his own declaration, he might also have heard of the death of Cunningham. During the examination of the plaintiff, he was seized with a fainting—in the fact of this extraordinary circumstance we are all agreed, but as to the cause we differ. Mr. Hopkinson has made his conjecture, I am at liberty to make mine. He considers it the natural consequence of his weak state of body and peturbation of mind under a false charge. I suppose it to be the consequence of false keys, and on that it was the officers relied. He was thought a man of nerve and strength, but these failing him, on being told the fact could be proved, encreased the suspicion, yet even in this event, the defendant, Mr. Stocker, does not rely on his own judgment, he refers himself to

Mr. Wharton. I do not undertake to animadvert on Mr. Wharton, it is however customary to call in a brother magistrate in difficult cases—but as respects Messrs. Stocker, Smith and Fox, their is no circumstance of inhumanity, it is therefore inconceivable that they were acting from malice.

A new subject of complaint is next brought forward, the sufferings of the plaintiff while confined in prison. I regret that he was exposed to or did suffer any unnecessary inconvenience in confinement: but deny that his sufferings there, are imputable to the defendants in this cause. I shall refer to the testimony of Mr. Lownes, than whom, except the justly celebrated Howard, I know no man whose name stands higher for humainty and benevolence to unfortunate prisoners than Caleb Lownes. It appears in evidence, that the plaintiff had an apartment as wholesome and convenient as any in the building; there is a set of standing rules to prevent the indiscriminate admission of persons from without, in order to prevent the introduction of spirituous liquors or instruments for escape &c. these rules being general and having no particular relation to the plaintiff cannot be a subject of complaint. Had the plaintiff any grounds of complaint, he might have mentioned it. But both Mr. Lownes and Mr. Wharton declare they heard no complaint, if he made no complaint the inference is, that he was not in a suffering condition.

From the 21*st* of September, till the 21*st* of October, he was under arrest on his own examination. We are told by their own witness, that the plaintiff had a discovery to make. Long looked for, was to come at last, but still it was never made for when the second examination was taken, the discovery appeared to be nothing more than the plaintiff had seen Robinson and Davis at Market-street ferry, whom he had seen before at his shop—Mr. Fox said to the magistrate, that Mr. Robinson was a man that he respected and Davis was a young man of an amiable character and one of his particular acquaintance—Haines gives his opinion of this discovery by saying that Lyon trifled with them.

The plaintiff says they ought to examine Robinson and Davis as that might lead to a discovery—what could he mean by refering to them, if he knew they could give information, then he possessed it himself; if he hesitated, he said too much, or not enough. What was to be founded on this loose suggestion. He said the same thing before judge Shippen, but after hearing all the circumstances of the case,

the judge was of opinion, there was cause to hold him to bail, and the plaintiff's counsel did not ask for his discharge. Are the defendants to be held liable to a malicious prosecution when the plaintiff's own counsel would not ask for his discharge, but only to lower the bail, which being complied with, the plaintiff was remanded. The question of probable cause is a question of law, and judge Shippen decided that there was probable cause by directing the party to give bail.

The next circumstance to be noticed, is, the confession of Davis, of whom the officers of the Bank obtained the greatest part of the stolen property. The governor in his speech to the Legislature at the first meeting after the robbery mentions, the recovery of the notes and cash of which the Bank of Pennsylvania had been robbed. The general assembly appointed a committee to examine into the state of the Bank as directed in the law granting a charter to that institusion, which necessarily brought on an investigation into the circumstances of the robbery. The opposite counsel have brought into view the report of that committee, and apply it as a further proof of the malice and ill will entertained by the defendants against the plaintiff, if there is any thing wrong in the report of the committee it does not attact to the defendants they did not appoint the committee, nor did they make the report. What is suggested therein respecting the suspicions entertained against the plaintiff, as privy to the robbery arises very naturally from Davis's confession, that Cunningham procured the false keys, but he does not know who made them. He also said repeatedly that Cunningham and himself alone were concerned in the robbery.— That Cunningham procured the false keys, and that Davis and Cunningham alone committed the robbery, may be perfectly true, and yet the plaintiff may be suspected of having furnished Cunningham with the false keys. True, we have not proved that the plaintiff and Cunningham were acquainted, or that the latter had been seen in the shop of the former, yet it does not destroy the suspicion though it would have strengthened it, if the fact had been established, but Cunningham is dead and Davis is absent of course we must fail on that point.

If there were many confederates in guilt, I believe we may presume so much on human nature, that if some were dead and others living, the greatest portion of the crime would be laid on the deceased, from hence I draw

this inference, that if Davis knew that the plaintiff furnished the false keys, he would be more likely to lay it upon Cunningham who was dead, than upon the plaintiff who is living.

The whole particulars of what passed in the examination of Davis does not appear, what we know relates to the division of the money, the false keys &c. these circumstances do not lessen the suspicion of the plaintiff being privy to the robbery, if the suspicion had been previously reasonable.—Though Davis had exculpated the plaintiff, ought the defendants to interfere when he was imprisioned for want of bail, upon the order of judge Shippen—and is this a reason on which to bring an action for a malicious prosecution against the defendants. I venture to say it was never heretofore the case here or any where else in a country governed by laws similar to those which obtain in this Commonwealth.

After the money was found, Mr. Hallowell applies to Mr. Fox to stop the prosecution against the plaintiff, what does Mr. Fox answer, I will lay the matter before the directors and wish for my own part that every thing may be done consistent with justice—What is his report of the reply of the directors—That the law shall take its course.

The course of the law permitted the Attorney-general to grant a *noli proseque* this will be refered to hereafter. However, on the 14 of December the plaintiff had a hearing before the supreme court, three weeks after the money was returned upon the very question I am discussing. "Whether there was probable cause of prosecution," and if the opinion of the court, after the hearing, had been, that there was not probable cause, they would have dischaged him without bail; but the court held him to bail, and the inference is, that the authoratative opinion of what is now the higest tribunal in this Commonwealth, was at that time, that the prosecution of the plaintiff was founded on reasonable and probable cause.

It has been said that the defendants did not make a full and fair disclosure of all the circumstances of the case. How have they supported this position? what was kept back? Is there a circumstance in the present evidence that was not mentioned at that time? or did the plaintiff then suggest that any thing was kept back? did his counsel interrorgate on any point, unanswered? nothing of this kind appeared! It is only now suggested by counsel to serve the *necessity of the* present moment. The opinion of the court

founded on a full view of the circumstances of the case, and they ordered the plaintiff to stand his trial for being concerned in the robbery or wait until the bill of indictment should be returned *Ignoramus*.

We say, that when a Magistrate upon enquiry shall determine a prosecution to be well founded, and we say, that well founded suspicions are probable and reasonable cause, that then the prosecutors are free from an action of this nature ; it will not suffice to shew that a bill of indictment was returned *Ignoramus*, to prove that the prosecutors were influenced by malice or malevolent motives, they must shew positive malice or their action fails. I acknowledge that after a bill is retuned *Ignoramus* by the Grand inquest of the County, it frees the plaintiff from the charge laid in the indictment, but it is not *prima facia* evidence, that there was not probable cause for commencing the prosecution: the Grand Jury knowing all the subsequent circumstances have an undoubted right to act upon them ; but this is no proof that others who were strangers to many of those circumstances acted maliciously, during the previous stages of the prosecution.

On the facts already enumerated, the law arises, and I trust to shew you by a series of the best authorities, that the present action is altogether untenable against the defendants.

2. Hale, pleas of the crown, pages 78, 79, 81. Shews an arrest on probable cause is lawful, when a felony has been committed ; there must be reasonable cause of suspicion alledged and proved. A constable may arrest upon the suspicion of another but he must alledge his justification in the same manner as the person entertaining the suspicion. Justices by statute may arrest upon suspicion, for they are Judges of the reasonableness of the suspicion—But further.

The third thing to be observed in this arrest upon suspicion is, that he hath probable cause of suspicion, which causes are many, after such arrest the party arresting cannot discharge him. He may be carried to jail, or he may be delivered to the Constable of the vill. But the proper way is to bring him to a justice of the peace, who may commit, discharge or bail him as the case requires

3. Coke on Littleton, Hargrave's ed. page 160 Sect. 4. Lord Hobart, Mr. Serjeant Rawle and Lord Holt, all coneur in the idea that where a civil suit is commenced falsely

and maliciously and for the mere purpose of vexation it is actionable. Sect. 5. If the suit be malicious as well as false is on that account punishable sometimes by Indictment or information as in the case of a conspiracy, sometimes by fine and imprisonment, &c.

3. Black. Com. 126. note 8. The essential ground of this action is that a legal prosecution was carried on without probable cause, but this must be substantively and expressly proved and cannot be implied. From the want of probable cause, malice may be and most commonly is implied. The knowledge of the defendant is also implied. From the most express malice, the want of probable cause cannot be implied.

Lord Raymond. 253. If A. be indicted of felony and acquited and he has a mind to bring an action, the Judge will not permit him to have a copy of the record, if there was probable cause of the Indictment, and he cannot have a copy without leave.

1 Term Rep. 544. 545. The essential ground of this action is, that a legal prosecution was carried on without a probable cause, we say this is emphatically the essential ground, because every other allegation may be implied from this, but this must be substantively and expressly proved and cannot be implied.

From the want of probable cause, malice may be and most commonly is, implied. The knowledge of the defendants is also implied.

From the most express malice, the want of probable cause cannot be implied.

A man from a malicious motive may take up a prosecution for real guilt, or he may from circumstances which he really believes, proceed upon apparent guilt, and in neither case is he liable to this kind of action.

1. Wilson 232. If the condemnation of goods for not entering and paying duty by sub-commissioners be reversed by the the commissioners of appeal in Ireland an action for a malicious prosecution does not lie against the informer for the judgement of the sub-commissioners shews there was a foundation for the information and the prosecution.

Peakes nisi prius 135. If A. strike B. and B. return the blow, on which A. Indicts B. for an assault, the bare fact of A. having struck the first blow is not sufficient to support an action for a malicious prosecution.

3. East. 314. No action will lie for not preventing but permitting and suffering the plaintiff from being arrested after payment of debt and cost, upon a writ issued out before such payment—malice is the gift of all actions for injuries of that nature.

Bos. and Pul. 388 An action on the case will not lie against a party suing out a writ, if he neglects to countermand it after payment of the debt; at least lest malice be averred.

Same, Vol. 2. 129. In an action for maliciously holding to bail, it is not sufficient to prove that the writ was sued out after payment of the debt, if the circumstances afford no inference of malice: but in such case evidence of actual malice must be given.

3. Espinasse. 7. 8. If a party is indicted for a felony, though he is acquitted without calling any witnessess, he cannot maintain an action for a malicious prosecution, if his acquittal was the result of deliberation, and the evidence sufficient to cause the Jury to pause.

Bos. and Pul. 587. Mentions a case under the particular circumstances of which a servant may have an action for a former master giving him a bad character, in which malice will be inferred—but same book 594, it was held by L. Mansfield that malice should not be implied from the occasion of speaking, but should be directly proved.

3. Espinasse. 165. In an action for a malicious prosecution in which the plaintiff charges the defendant, with having imposed on him the crime of felony, by reason of which he was imprisoned and on production of the information, before the Justice there is no charge of felony though the warrant was to arrest the plaintiff for felony, the evidence does not support the declaration, and the plaintiff shall be non suited—If a party makes a complaint before a justice of peace which he conceives to amount to a felony, and issues his warrant accordingly to arrest the party complained against, and the facts do not amount to felony, no action for a malicious prosecution will lie, against the party who made the complaint.

2. Modern, Hammond *vs.* Howell. An action will not lie against a Judge for what he doth judicially, though erroniously.

6. Mod. 25. Queen *vs.* Mayor of Thetfoyd. Per Cur. If a person be ever so innocent yet if there were a probable cause of prosecution, action for malicious prosecution will

not lie; for it must be direct malice, without any colour of cause, that will support such an action—For this is quoted Carthew, 416.

JUDGE YEATES.

Express malice must be proved, for innocence is not sufficient; as laid down in the books.

MR. INGERSOL.

I was proceeding to cite.

Salk. 15. on that point. If Ignoramus be returned, when indictment contains no scandal or the party has been imprisoned, no action lies; otherwise if it contains scandal or the party has been imprisoned, but than there must be evidence of *express rancor and malice;* for innocence is not sufficient.

Rolles ab. 588. Lit. C. placita 2. Was refered to and then Mr. Ingersol concluded, with saying. That the case ought not to be decided by any particular discrimination, but on the fixed uniform and settled rules of law. The moment a new principle of this nature is introduced there is an end of our boasted security for our lives, liberties and properties. That day when this doctrine shall insinuate itself into our courts of justice, that moment our constitution is but a sound, a vox et pretera nihil—We may boast of our advantages over other people, but it is vain-boasting, if we are to adopt a system of uncertainty instead of a long established and well known code of law. We delude ourselves—instead of having gained the vantage ground, we shall find that we have abandoned it by our revolution.—Therefore I conjure you not to suffer any consideration to induce you to put this case on any other ground than the settled law of the land.

If the plaintiff has suffered in his person, his property or in his reputation, I declare with unfeigned sincerity that I regret it, as much as any man. But if these unfortunate circumstances have occurred from a regular pursuit of the proper course of law, the defendants are not to blame. It was not done by them out of malice; no proof of malice has been adduced before you, either positive or presumptive, or that the prosecution was carried on by the defendants without *reasonable* or probable cause. You must therefore either

prostrate every rule of law, or return a verdict in favor of my clients.

MR. DALLAS

Wished before the counsel for the defendants concluded on their side, to refer them to the cases in, 4. Burrows 714. Term reports 544 and 4 Burrows1974, from all of which it would appear that from the want of probable cause the law implies malice. He mentioned these cases in addition to those cited by Mr. Hopkinson, in order that the opposite counsel might reply to them, before the argument came to him to conclude, as that course was agreed upon among the counsel on both sides, at the outset.

MR. LEWIS.

The evidence in this case is now fairly before you, and has been fully observed upon by Mr. Ingersol who has just preceeded me on the part of the defendants, it will be both fatigueing and irksome to you and myself to repeat it word for word, all therefore, I intend to do is to give a concise statement of the testimony bearing an immediate relation to the cause, and then to draw such conclusions from it, as I conceive to be fair, equitable and legal.

You will please to consider that this is not the cause of the Bank of Pennsylvania in its corporate capacity, but the cause of the defendants individually; two of them are officers of that institution, and as such it was their duty to set on foot every possible enquiry in order to discover the persons concerned in robbing the Bank—No doubt the directors approved their conduct; but that cannot make them liable for what was irregularly done by other individuals, therefore such circumstances might be laid altogether out of view.

I take the liberty of mentioning another circumstance, without intending to insinutate any thing against the Plaintiff or his counsel, for I do not think it originated with either of them, I therefore acquit them entirely of any participation in the report: but I stand informed that a report is gone abroad that the jury ought to find a verdict for 5000 or 7000 dollars damages in favor of the plaintiff, and that it had been mentioned to one of the jurors.

[Mr. Dallas said if that was to have any effect on the trial he hoped Mr. Lewis would now apprize them of it.]

MR. LEWIS, *continued.*

He had been informed that persons out of doors had already given and circulated their opinion that the jury would go so far and so far in their award against the defendants, believing that the Bank would have to pay the expence. He mentioned as an extraordinary circumstance and desired the jury to guard against any impression arising under its influence.

He proposed now to examine into the origin and consequent circumstances of this cause. The original prosecution against the plaintiff was instituted in the fall of 1798. So far was he then from considering himself an injured man, or for some time after, that the present action was not brought till 1801. True a previous action had been brought in 1800 but it had failed owing to some cause which has not been explained, he sincerely wished it had been explained, it would have saved him the trouble of conjecture. He presumed it could not have been occasioned by the want of money for he is supported by four of the greatest and ablest counsels at the bar of the supreme court of Pennsylvania.

An address was made by Mr. Hopkinson to your passions instead of your judgment. We will meet his supposed case and shew that it is altogether groundless. He says the officers of the Bank, in order to conceal their own guilty negligence, encouraged the prosecution against Lyon not believing it to be well founded and knowing Lyon at the same time to be an innocent man, they determined to render him infamous & ruin him in his business. This certainly would render those gentlemen monsters in human shape. If Mr. Stocker a magistrate of this City, who is bound by oath to render justice without regard to persons, has joined the officers of the Bank, in an attempt to ruin and defame the plaintiff, I give up his defence : and Haines must also keep them company, though he is a constable and bound to execute the magistrates warrant, yet he shall be envolved in all the damages arising from the improper conduct of Mr. Stocker, the jailer, or any body else, the plaintiff's counsel may choose to connect in the present action.

We deny these charges in all their parts and in all their relations to each and every of the defendants, We say the prosecution against the plaintiff commenced with a reasonable and probable cause of suspicion on the part of the officers of the Bank. We repel the charge of rancor and ma-

lice, with indignation and will shew it to be nothing more than slander.

We say there was strong probable cause to suspect Lyon to be concerned in the robbery at the time the first and second examination was held before Mr. Stocker. You will remember that Mr. Lyon is not now on trial for larceny or whether the evidence is sufficient to establish his guilt or convict him as an accessary to the robbery: but whether it is sufficient ground for the defendants to suspect him of being concerned in the felony

The first circumstance relied upon in order fix the odium on the officers of the institution is, what took place in the attempt to commit a robbery, whilst the Bank was kept in the Freemasons lodge in Lodge-alley—In pursuing an enquiry into the circumstances of that attempt they must have known Cunningham lodged in the Banking house, if they suspected him would they after such an attempt and with such a suspicion trust Cunningham with keys, even if they had ever done it before? It is incredible in the nature of things, that the officers of the Bank should be so regardless of their own property even if they were regardless of that of the other members of the institution, for it must be remembered, they also were stockholders, and would have to sustain their proportion of the loss. It is also improbable that they suspected Cunningham, for if they had, they certainly would not have retained him as an in-door porter.

How does the fact stand. Mr. R. Ralston told you that Mr. Smith the cashier came and informed him, that the Bank had been broken open last night, & he was afraid had been robbed of property to a considerable amount, that an attempt to force the cash-vault had been made and persisted in for some time, but it did not succeed. If this be true there is no reason to suppose that the robbery was attempted from within; on the contrary there was reason to believe that is was attempted by persons from without, for they used a crow-bar, to force their entry through the stone work. Here ti occurs to me that the evidence given by Coldwater cannot be altogether correct, he said that he used to be in the Bank frequently by break of day to make fires, and the porters used to go to Smith for the key, turn-about, oftentimes Cunningham used to have the key over night—If the key was left with Cunningham over night he might easily have got into the cash-vault and robbed it of its contents without the aid of a crow-bar. I will not observe further on this evidence

at present; but to return: From what I have observed this consequence necessarily results, that after the attempt made in Lodge-alley (whether it was made by Cunningham or somebody else) was found to fail, the party would turn his attention to some new mode of attacking the cash-vault, this must be (to effect it successfully) either to employ false keys or picks, this rendered it necessary to call in the aid of a person capable of forming such instruments and who might also have the opportunity of forming them.—While the doors remained in their place, there was no opportunity for a blacksmith to inspect the lock or acquire the necessary information for making a key. The person must threfore be him who worked for the institution and had the doors in his possession. After he had furnished the keys it was not necessary that he shouldbe present when the robbery was committed: he might go out of the way before the plan was completely executed in order to avoid suspicion, and return afterwards when the suspicion was over or had subsided.

Now to the facts. The locks on the doors of the cash-vault were never in any other person's possession but Patrick Lyon's. The doors were originally made by Lyon. They were altered by him when the Bank was removed to Carpenter's-hall, and it became necessary to shift the locks. They were left in his possession from Thursday till Saturday; he had during that period an opportunity of not only taking them off, but taking them apart, examine them and make new keys to them. They could not be picked by his own acknowledgement. Here then to me appears strong ground for suspicion. Mr. Hopkinson says they could not be opened with false keys, because they left no marks, that does not follow, false keys may be made so exactly to resemble the true keys, that they will open locks with equal facility—Mr. Hopkinson endeavored to infer that true keys were employed, but that appears to be a mistake for the true keys are proved to have been on the night of the robbery in the safe custody of the proper officers. Coldwater must have been mistaken in another part of his testimony when he says he has seen Cunningham frequently unlock the door of the cash-vault and take out the books and the cash and boxes of dollars—from this it appears as if their was but one vault as a general receptacle for every article of cash and of accounts. But it is in full proof that there are two distinct vaults, one for the money, and the other for the books.

You have heard doubts mentioned whether the doors of the cash-vault were locked that night or not. Consider of this gentlemen upon the ground of probability. The usual method was to lock the doors of the cash-vault after the business of the Bank was done for the day, and then the cashier and teller each took a key. Now Mr. Hughes the teller had been sick some time before the robbery, and Mr. Annesley was substituted in his place, you find that Mr. Smith at the usual time of the afternoon before the robbery brought to him one of the keys of the cash-vault and put the other in his pocket. Jonathan Smith the cashier has been proved to you to be a man of attention, care and integrity it would be very strange indeed, if, on this occasion when all the responsibility lay as it were upon his own shoulders, he should neglect to see that the doors of the cash-vault were locked and left in its usual state of security. It is suggested that Mr. Smith might have given back the key to Cunningham contrary to his trust and usual practice—this is altogether a fanciful notion, but suppose it was true, of what avail would Mr. Smith's key have been to Cunningham, whilst the other remained safe in Mr. Annesley's parlor, but it was also insinuated that Cunningham might have obtained Mr. Annesley's key, how could he effect this, Cunningham did not know, that it hung up in Mr. Annesley's parlor, and could not probably find it, even if he had broke into the house for the purpose, but if he had, would he have gone back and put it into the same place, this fine fancy of the plaintiff's counsel I shall persue no further, it appears not only improbable to me, to have been effected in this way, but in this as well as every other way through the use of the true keys it seems to have been morally impossible..

It has been stated that the plaintiff declared these locks not to be fit for a Bank, that he could make better himself, this is a proof of his skill in that branch of business, and a futher proof that he wished his skill to be employed in that line. Though somewhat in opposition to this opinion of Mr. Lyon, Mr. Simmonds has sworn, that the locks were of a good quality, and Mr. Wheeler a very skilful mechanic, has declared, that the one he examined could not be picked. We say the lock on the cash-vault examined by Mr. Wheeler had been opened, the other one was got from Mr. Simmonds; and Mr. Robinson thought it was one of the same kind, though something larger.

[Mr. Condie said, Mr. Lewis was mistaken in his relation of this part of the testimony.]

MR. LEWIS, *proceeded*,

Mr. Churchman told you, that Lyon said to him in a conversation between them at the time the doors were fitting up: that the locks were patent spring and tumbler-locks which no man in America could possibly pick—if that be true, let us turn to the testimony of Mr. Wheeler who says the lock he examined was one that could not be picked that it would be ruined if it was picked; and Robinson tells you the locks were alike, but one was something larger than the other. Now these locks were put on the doors of the cash-vault by the plaintiff himself. We are therefore warranted in the conclusion, that Fox and Smith had good grounds for believing that the locks had been opened by false keys and that the plaintiff alone could have furnished them. And Mr. Stocker before whom he was examined had just cause for joining in the same conclusion, would you not yourselves have had the same suspicions under a similar knowledge of the circumstances of the case.

Messrs. Fox and Smith are made defendants in this case, Mr. Smith cannot be offered to prove that he had one of the keys of the cash-vault, because he is one of the defendants. If Mr. Annesley had died as happened to many others of the institution, in what a situation should we have been in for want of knowing where the genuine keys were the night of the robbery; it is fortunate for the defendants the so much testimony has been obtained on this point.

Lyon is said to be a very skilful person; suppose he had been taken into the business by Cunningham, it was not necessary that Cunningham should inform Davis who was to furnish the false keys; they two might actually commit the robbery and each take his share of the money, Cunningham reserving a due proportion for the person who furnished the keys. Mr. Lyon being so skilful, it might readily occur to him that it would be best for him to be out of the way as in that case he might prove an *alibi*. To a man of Mr. Lyon's skill, it would occur to his mind that it would be safer to trust to one then to two—to trust his secret to Cunningham alone than to Cunningham and Davis also—If the case was so, it has terminated fortunately for the plaintiff, for *Cunningham* is dead, and the secret expired with him—If

this reasoning does not furnish ground of suspicion, taken with the other circumstances it must have its weight.

It was intimated that if Lyon had been concerned, in the robbery he would have taken his share of the booty and have gone to his own country—To answer this, I observe he had left the City before the robbery and consequently before had any of the money, and when he returned he found Cunningham was dead, and therefore could not obtain any, he thereupon went to Mr. Stocker, to clear himself of any suspicion, he was sent to jail and there remained until the money was recovered, hece did not returnto his own country.

We are asked our reason why we did not look immediately to Cunningham? This question has been satisfactorily answered by Mr. Ingersol, I will however add that the man was next day after the robbery taken with the yellow fever, grew worse and worse daily till he expired—Who is the officer that would lay hold of a man in this condition upon a warrant? Who is the magistrate that would admit a man in this condition into his office for examination? If he had been ordered to jail would he have been received there? These questions answer themselves. But their suspicions soon took place in regard to Cunnigham, and you find them examining at his lodgings on the 12th of September, thouhg inthe midst of the yellow fever without success.

The vigilance and activity which the officers of the Bank exerted throughout this whole transaction, bespeak them a high degree of praise instead of censure, I will not dwell on this point as it has been fully dilated upon by my colleague. But I will call your attention to a different channel; Lyon left his house and shop a few days before the robbery. Whether he went to avoid the yellow fever or to avoid being considered as a confederate in the contemplated robbery, I do not pretend to say, but I do say, that no person could practice more ingeniously, and you know he is an ingenious man, to avoid suspicion than he then did. He was a man in good business and had a handsome property; for the proof of this I refer to the testimony of his friends, and to a printed narrative of his case, he went however without the means of subsistance for you find him near Lewis-town with thirteen dollars, in his pocket, and obliged to pledge his watch to secure payment of his expences to the landlord with whom his boy lodged. The singularity of these circumstances are sufficient to induce suspicion.

On the 12th or 13th of September, Edwards the pilot told him the Bank of Pennsylvania was robbed, he gave himself no concern about it, on Sunday Mr. Hunter from Philadelphia conversed with him about the same robbery, and on Monday the conversation was renewed ; when Lyon asked Hunter if he was suspected, this appears to me to be another singular circumstance : why should a man being perfectly innocent of any concern in a robbery, ask such a question ?

Mr. Lewis here read these transactions at length from Patrick Lyon's printed narrative, and concluded that they were well contrived to blind, and prevent the officers of the Bank from seeing into the true reason which governed his conduct, and gave to the plaintiff solid grounds ro prove an alibi—But from hence he drew still stronger inferences that Lyon ought to have been suspected.

The court adjourned.

Eadem die.

MR. LEWIS, *in continuation*,

I gave a reason this forenoon why the defendants did not proceed so expeditiously against Cunningham as Mr. Hopkinson seemed to think was necessary. The information of the watchmen was not given until Cunningham was beyond the reach of the jurisdiction of this court, had he lived, that the inquiry would have been pursued in that channel, is manifest from the search made by the defendants at his lodgings a few days after his decease.

With respect to the first examination of Lyon, before Mr. Stocker, I will make but one observation in addition to those made by Mr. Ingersol, Lyon came to alderman Stocker in order to surrender himself as he had learned that he was suspected ; his mind must of course have been prepared for the occasion ; to him nothing relative to the robbery could be a sudden charge, yet, when he was questioned by Smith and told that they could prove him to be concerned in the robbery, the plaintiff turns pale, becomes convulsed, and calls for water to prevent his falling under the shock. I do not contend that these actions arising from surprize or terror are to be considered as conclusive evidence of guilt, but they are strong indications that his mind was affected by the delicate and perilous situation in which he stood. It is next to *impossible* but the mind of every gentleman present at the *time, must have* drawn the conclusion of guilt from this cir-

cumstance in addition to those already known, at least, that they afforded reasonable and probable cause to suspect the plaintiff. Mr. Wharton says, that at that moment he thought the plaintiff was about to make a confession, and when he found himself disappointed he recommended to Mr. Stocker to commit him.

In addition to these circumstances it is remarkable that on his first examination he confined himself exclusively to the narrative of what had taken place after he had left the city. On his second examination, which was undertaken in hopes of procuring some information, as he had mentioned to Lace and Haines that he could give some as appears from their testimony: he mentioned some matters that occurred before he left the city, that Robinson and a stranger came to his shop while the Bank doors were there. Now, what conclusion must the officers of the institution draw from this? it was strange! it was passing strange! that their own carpenter Robinson who took the doors to Lyon's shop should call there and give orders to him to use expedition; but he brought a stranger with him, well, he did not leave him there for they went away together, but the stranger returned, and then I would ask, what passed between the stranger and Lyon; might they not at that time have planned the scheme of the robbery; Lyon had seen him frequently about the Bank, and now that he had the locks in his possession, he might suggest the practicability of taking an early opportunity of making a fortune with the aid of false keys, which it was now in the power of Lyon to furnish Davis. From which ever side the idea was suggested, it appears to me that the two men had it in their power to rob the Bank, one by furnishing the false keys, the other by applying them to open the cash-vault.

He mentions that the next time he saw the stranger (Davis) and Robinson together, they were drinking in a tavern, and at sight of him they appeared confused, that he went home and told his apprentice boy that he had seen them, and suspected they were after no good. You will recollect that this apprentice boy is dead, so that the whole truth of this story depends upon his own testimony. But if he really entertained these suspicions he ought to have mentioned them on his first examination; what came out now, was concealed before; and it might justly induce the justice to suspect, the plaintiff might hereafter make further disclosures and discoveries.

It was said by Mr. Hopkinson that the plaintiff now gave such information, that if it had been pursued it would have led to the discovery of every thing. Did he say this, upon instructions from his client? but taking the matter up on this ground, I say, if he had information that Davis was concerned; for that was the way his information pointed, he had such information from the beginning, and he ought to have disclosed it on the first examination, whether it would have led to the detection of Davis was what was known to Lyon, not to my clients. If Lyon was confederated with Davis, he knew enough to set the officers of the Bank upon that track; for although he was absent when the robbery was actually committed, yet if he had furnished the keys, he might be pretty certain that the robbery was effected by their means.

[Mr. Hopkinson said he made his inference from the course of the testimony, and not from instructions from his client, whom he knew to be as honest and as upright a man as any standing in this court, and believed he would not change the honest integrity of his heart with any of the defendants, though all their wealth and consequence were added into the bargain, he wished Mr. Lewis would disclose the instructions he had received from the defendants, that the two parties might be compared.]

Mr. Lewis proceeded. I am sure my clients are equally as honorable men as yours. I was remarking that no disclosure of any thing was made by Lyon, until the second examination, and then only as much as he pleased, but I will not take up any more of your time by analizing the second examination.

Mr. Lewis next adverted to the testimony of Mr. Annesley and infered from it, that the officers of the Bank had reasonable ground to suspect Lyon, as well as the watchmen, who were proceeded against before the mayor, but eventually they were left to themselves. No action of the nature of the present was instituted by any of the parties who had been suspected, nor does any one complain of being persecuted or treated with inhumanity by the plaintiffs, though one of the watchmen complained of being kept under examination untill 12 o'clock without his breakfast; he would not detain the jury any longer on this point.

He reminded them that Lyon had been carried before *Judge Shippen* on a habeas corpus, that Mr. Fox was examined, and from the testimony of Mr. Hallowell you find

the opinion of the judge to be against Lyon, and although Lyon was his client, he was so well convinced there was probable cause to suspect Lyon, that he did not apply to the judge for a discharge, but was satisfied in obtaining a reduction of the bail, and acquiesced in his recommitment to prison. If then such was the opinion of the judge, and such the sentiments of his counsel, why impute malice to the defendants. Whether the judge took all or some of the circumstances assigned by Mr. Fox as ground for his suspicions, is for the judge to say, but, what Mr. Fox declared upon oath, cannot be imputed to him as suggested by rancor or malice, the judge saw there was probable ground assigned for the suspicion, and remanded to prison. It is not fair to infer that Mr. Fox did not give a full narrative, when he was stating circumstances upon his oath, that he stated all which were material, appears from the silence of the plaintiff and his counsel Mr. Hallowell, while the examination was going on before the judge. If we are right in this statement, there is an end to all that has been urged respecting the want of probable cause.

To make this point doubly sure, we have the plaintiff again examined on a habeas corpus, before the supreme court, on the question of probable cause of suspicion, and that too after the discovery of Davis and the restoration of the money by him. The opinion of the court was understood to be, that there was sufficient cause to hold the plaintiff to bail under the former commitment, but the bail was reduced so as to bear a proportion to the amount of the balance not recovered by the Bank, and which might ultimately come in as a complete pecuniary indemnification of its loss. On what legal principle Judge Shippen had reduced the bail before the property was recovered by the Bank, he did not presume to say, but the supreme court was right in its order to reduce the bail to a less sum, because then the loss amounted to no more than the bail they required.

You have heard the defendants charged with negligence in office and that in order to cover this fault in themselves, they obtained a pardon for Davis, and continued to prosecute with the most diabolical and black hearted malice, a man who is perfectly innocent. If such be the case, it is wondrous strange indeed, can it be true of one of the Defendants (Mr. Stocker) a gentleman of a most amiable character, if there has been negligence in any officers of the Bank, what has he to do with defending them, he is not one

of them, the idea originates in folly or something worse. Judge Shippen may as well be criminated, for he also committed the plaintiff to prison. Mr. Wharton the mayor; the inspectors of the jail, and even the mild and humane Helms (who sacraficed his life to the cause of the prisoners) and all who disinterestedly exerted themselves in guarding, superintending and providing for that institution during the yellow fever of 1798, are all made instruments of the diabolical and rancorous malevolence entertained against him by the president and cashier of the Bank. That these gentlemen should confederate for such purposes is inconsistent in the nature of things, yet the plaintiff's counsel says it is so! but what will the jury say?

You will observe here that though Lyon was known to Mr. Stocker, yet there were several of these gentlemen to whom he was utterly unknown, if these have taken up a bad opinion respecting him, it was from circumstances they had heard from which they supposed him guilty of participating in the robbery, for it does not appear they are possessed either of weak heads or black hearts, if they have been brought to think unfavorably of him, from this cause, they may all have actions brought against them by the defendant for a malicious prosecution if malice is to be infered from what took place during the time Lyon was confined whilst laboring under a suspicion of being concerned in the robbery.

How does this action stand with regard to express malice, for express malice must be proved and not implied. What is the express malice of Haines the high constable? a warrant is given to him to commit the plaintiff to prison, he is bound to execute the warrant; for liberty and equality is not yet carried so far in this country, that a constable may fly in the face of the magistrate, and refuse to execute his process; no, he is bound to do his duty, and in doing his duty, he is justified, but here the doctrine contended for is, that a constable in the performance of his duty shall be punished as much as any other man acting without legal authority. This doctrine is somewhat novel, and it is to be hoped that a jury will not be found on this occasion to establish the first precedent in its favor.

How is it then in respect to Mr. Fox, what was his conduct; when it was discovered to him that the Bank had been robbed, he obtained a warrant against Lyon because he sus*pected him,* as well on his own knowledge of the circum*stances as of* that of other officers of the Bank. He went

afterwards to Mr. Stocker's attended the two examinations of the plaintiff, we find no warm altercations, and no sharp expressions used by him, he remained mild and benevolent: if he was not to blame there, where was he to blame? he went before judge Shippen what was his conduct there? Mr. Hallowell's testimony shews it, both there and on a subsequent interview to have been very proper, he promised to consult the directors but for his own part he wished every thing to be done, consistent with justice. Where then is there ground for the express malice imputed to Mr. Fox, you may look for it in declamation, or in the visions of the Gentlemen's fancy —it may be found any where, but where it ought to be, that is in the testimony of the witnesses.

We come now to another Gentleman who is made a defendant in this cause Mr. Stocker, it is stated that this Gentleman appears before you in two different colours—first as the friend of Patrick Lyon, and afterwards as his enemy. Mr. Stocker employed Lyon as a lock-smith, and for other purposes in the way of his profession, this proves that Mr. Stocker thought favorably of Lyon, for every gentleman who employs a mechanic is supposed to think favorably of him; but Mr. Hollingsworth's evidence proves the fact, he tells you that himself and several other gentlemen were called by Mr. Stocker to see an improved fire-engine made by the plaintiff, that the object was to recommend Lyon's workmanship and that they all joined in promoting that object. The learned counsel for the defendant will not, I presume set up this transaction, as a proof of the most diabolical malice, entertained by Mr. Stocker against Mr. Lyon.

There is another circumstance mentioned on the testimony of their own witness Mr. Lace, to which we ask your attention. After some conversation between the witness and Mr. Stocker respecting getting some person to bail Lyon, Mr. Stocker recommended Lace to apply to an attorney and get a *Habeas Corpus* to take him before a Judge, that he mentioned judge M'Kean, but Lace stating that judge M'Kean and himself had some misunderstanding, and he would prefer Judge Coxe; Mr. Stocker said that would not do for he must go before a Judge of the Supreme Court and advised him to go before Judge Shippen at his house on the Ridge-road. And further Mr. Stocker appeared friendly and said, he would do any thing for the Plaintiff consistent with his duty. Does any thing in this affair look like rancor or ma-

lice aginst Lyon on the part of this defendant. No, far from it, the whole appears to mark a strong degree of regard and kindness towards the plaintiff.

The same witness declares that in a subsequent conversation with Mr. Stocker, he declared that the Bank was not going to let Lyon out of jail, for he has threatened to flog us and other Gentlemen of that Institution, and therefore they would keep him there as long as he would stick together. It is visible from the course things had taken that the plaintiff gave the first threat, the money had perhaps been recovered, and Lyon thereupon induced to express his resentment in the manner related by Mr. Stocker, and he might apprehend a serious injury. Mr. Lace's testimony on this point is rather equivocal, and too much stress ought not to be laid upon it, he appears to have stated it, to have happened at two different places, and expressed in different words.

The next point we proceed to is Mr. Smith's case, it consists of two parts; first, what is stated by Cave and his hair-dresser Rizer, but it will not be amiss to remark that if his conversation with those persons shew any degree of malice, there must have been some reason or cause for it, some previous quarrel or misunderstanding, yet nothing of the kind is in proof. Cave says nothing more than that Mr. Smith was convinced from certain circumstances (which he mentioned to Cave at the time,) that Lyon was the person who had robbed the Bank: his testimony does not shew that Mr. Smith was guided by malice, or had the least degree of rancor against the plaintiff. The deposition of Joseph Rizer, is introduced to prove malice on the part of the defendant Mr. Smith, that deposition is interlarded with much profane language. The counsel for the defendants have endeavored to get rid of this by shewing that Mr. Smith is a man of good moral conduct and they have given you the testimoney of several of the most respectable Gentlemen in the City, who have lived in the closest habits of intamacy with him, some of them almost from his infancy, and the uniform testimony of those Gentlemen is satisfactory on this point—if they are accurate the defendant must be free from every species of profanity—If in this case there should be a doubt on your mind, you are bound by all laws humane and divine, to lean to the side of charity and consider him innocent of these offences againt the commandments of his God and the Laws of his country.

Who Joseph Rizer is I know not, nor what was his character whilst living, but what is the character of Mr. Smith, I do know and it is such as we have laid before you upon the oath of Mr. Wheeler, who has known him from his infancy, upon the oaths of Mr. Inskeep and Mr. Ralston, who have seen him in all moments, as well those of conviviality as those of business and domestic life. It does not appear from the testimony of those witnesses that an oath or curse ever escaped his lips? therefore you will not believe it possible that he could deliver himself even before his Barber in the profane language attributed to him in J. Rizer's deposition; if, Rizer is mistaken in this, his whole deposition falls to the ground: being convinced that the conclusion I have drawn will be that of every upright man, I dismiss this point without further examination, for the testimony of Mrs. Pendergrass adds such little weight to the other, as to render it unnecessary to detain you longer.

From all these considerations, I am warranted in the conclusion that the defendant, not only had probable cause to suspect the plaintiff, but sufficient to justify him in instituting the suit, and that there does not appear in evidence to you any proof of express malice, and yet to convict him both these circumstances must concur.

I do not take notice of what took place in jail whilst it was under the care of Mr. Helm and Mr. Wharton; because you have full evidence that proper provision is made for all prisoners, and you cannot believe that while proper attention was paid to all others, no regard was had to him. I do not take notice of any damage he may have sustained on that account, because that is ground, on which we shall never arrive in the present action: but there is other ground for us to take, and on that my position is, that

To maintain the present action it is necessary to shew that the proceedings complained of, have not only originated in a baseness and malignancy of heart, but likewise without any reasonable or probable cause of suspicion, and this the plaintiff's counsel well know, they have laid it so in all the courts of their declaration [here he cited from the declaration to confirm his assertion.]

The foundation of this cause, is that the defendants, did falsely and maliciously *and* without any reasonable or probable cause, arrest &c. the plaintiff. You will observe that the conjunctive "*and*, not the conjunctive disjunctive *or*"

is used——it must be " with malice *and* without probable cause, not" " with malice, *or* without probable cause," if the latter doctrine was to prevail 99 out of 100 would escape from justice for few men would subject themselves to the hazard of bringing on themselves a prosecution for their interference in bringing another to justice in cases in which they are not personally interested. If I have a heart as black and rancorous as hell itself, and I find a man trampling on, and violating the laws of the state, I have a right and am justified in commencing a prosecution against him. If on the contrary my motives are pure, and I proceed merely for the purpose of justice, yet if I have no reasonable or probable cause for prosecuting the person, I am not subjected to an action for damage. Both circumstances must concur, or there is no injury. There must be malice and there must be the want of probable cause, this is the Law, and it is the daily practice. A man is taken up, upon suspicion, carried before a magistrate, on oath committed to prison for want of bail, and at length a grand jury return the bill *Ignoramus* and the man is then discharged, but he never can bring an action without proving that the prosecution did arise from malice, and has been continued without the party having had any reasonable or probable cause for suspecting the other of the offence, charged against him. If the person should, in such case, apply to the counsel for advice, there is not a gentleman who practises at this bar, but would tell him that he must be able to prove those two grounds, or his action could not be sustained.

This is one of the first actions of the kind ever brought into this court——If it shall be determined to overset the Law as it has hereto stood; I presume it will become the practice hereafter for every man who shall be discharged by the return of an *ignoramus* bill, to bring his action of damage against the party and the Magistrate, who were concerned in the prosecution.

I never heard till yesterday that a bill being returned *Ignoramus*, was *prima facia* evidence that there was no probable cause for suspicion; if this position be true, and the Law implies malice where there is no probable cause; then an action of damage lies against every one, who has prosecuted another without being able to satisfy a grand *jury that* the suspected person, is absolutely guilty of the *offence alledged* against him. I venture to say, and the

court will support me that all our practice in Pennsylvania, and all our legal authorities which we draw from other countries are directly in the face of this monstrous doctrine.

The gentlemen know that it is necessary to fix malice on us in order to maintain their present action, I am not displeased that they brought it in this form, nor with the declaration made by Mr. Hopkinson—In charging us with malice he does not mean malice in the litteral sense of the word, but in a legal construction, he acknowledges the defendants characters are superior to that suspicion; that they are not of a malicious temper or guided by a malignancy of heart. The legal meaning he said was different; a man of the most humane disposition my be legally involved in a malicious prosecution.

After these admissions however he went on and imputed the most wanton and diabolical malice against Mr, Smith. I am willing to meet the gentleman, on this ground. His possition that where there is not probable cause, the Law implies malice, requires a little alteration. If he stated that a prosecution had been carried on without probable cause, and this had been substantively and expressly proved, for it cannot be implied, then he would have ground for his action, if he proved also malice——But should he prove express malice, the law will not imply the want of probable cause. Of the evidence produced to prove express malice, the jury will judge. To Test by this rule, I shall refer to a few books, viz.

3 Blackston 126*.
6 Modern. 25†.
Salk. 15‡.

In this case it appears that innocence does not authorise an action by the party, then if we have any slight degree of probable cause of suspicion, we are not liable on this action. It has been shewn the plaintiff had been taken before a magistrate of competent jurisdiction, and before the supreme court, and they both decided that he should be held to bail; this is sufficient proof that probable cause existed.

The bill of indictment avails nothing, See 4 Black. 301. et Seq. It is not a proof of innocence. When the grand

* For the extract see anti 106.
† See anti 107.
‡ See anti 108.

jury have heard the evidence if they think it a groundless accusation they endorsed it ignoramus &c. and then the party is dischared without further answer. But a fresh bill may afterwards be preferred to a subsequent grand jury, and if they are satisfied of the truth of the accusation they endorse upon it " a true bill" then the indictment is said to be found snd the party stands indicted. The same is laid down in 6 Mod. 217. I hope neither of our clients may be hereafter apprehended as confederates with the robbers, Cunningham and Davis——I am pretty sure it will happen to neither of mine.

Mr. Lewis referred to Bridgeman's reports 131 and to 2 Hales 79—to shew that Mr. Stocker, acting as a magistrate, could not be prosecuted on an action for damage, for what he had done in his office as a magistrate, or that a constable was exposed to a like action for executing the Duties of his office, to which he was bound by oath.

He referred also to pages 115. of the same book and 85. to shew that such doctrine as contended for by the Plaintiff's counsel was replete with absurdity if not with mischief.

This being a point of Law it was competent to the court to determine it, and not for the jury; the other authorities cited were Cowper 173. Peake 135. Buller 14. and a 1000 other cases might be added if the court deemed it usefull or necessary.

[Mr. Justice Yeates knew there were several other cases.]

Mr. Lewis then said, he would hasten to a close; he presumed that the circumstances proved by the witnesses on this trial shew that Mr. Fox and Mr. Smith had reasonable, and probable cause to suspect the Plaintiff of being concerned in the robbery, and that the Judges in ordering him to give bail determined it so.

One point he remarked in addition. There was a warrant out against Lyon, issued by Alderman Jennings who is since dead, for this it will not be pretended that Mr. Stocker is answerable.

His process against Mr. Stocker, a magistrate, and Haines a constable was not in conformity to the Laws of Pennsylvania, which required 30 days, notice to be given to the Defendants See, 1 vol. of Dallas's ed. page 604 passed 21 March 1772, that he may make his defence. The justice *may tender* amends to the party complaining within 30 days.

after notice &c. No Plaintiff to recover a verdict unless notice was given. No action to be brought against any constable &c. until demand has been made of the perusal of the copy of the warrant—Lastly no action shall be brought against any justice of the peace for any thing done in the execution of his office or against any constable or other officer &c. unless commenced within six Months after the act committed. They complain that on the proceedings before Mr. Stocker no oath was required, as enjoined by the constitution; and yet they bring suit against him a long time after the cause was taken out of any court of Law whatsover, by the limitation of six months expressed in the last section of the above law. The circumstance of the commitment of the Plaintiff by Mr. Stocker took place in September 1798, but no action was brought till March term 1801. This suit has debarred Mr. Stocker of the defence he might have set up on the testimony of Mr. Fox, Mr. Wharton and Mr. Smith, and the delay vitiates all the proceedings. If Notice had been given which the Law requires Mr. Stocker might have pleaded, non. cul. not guilty and had the benefit of that plea. To this point be referred to 1. Lord Raymond 153. And the case of William Weister which took place in this state before any of the present Judges had a seat on that bench.

With regard to the violation of the constitution complained off, the plaintiff might have had his action for false imprisonment, but he can sustain none for a malicious prosecution. He thought it belonged to the court to decide this point. But he concluded to leave the cause to the jury under tne direction of the court on the point of Law, with a thorough conviction that there was no ground shewn to prove that the Defendants prosecuted the Plaintiff falsely, and maliciously and without any reasonable or probable cause.

MR. DALLAS,

In the opening, Mr. Rawle said he rose in defence of his clients, who were men of fortune, and whose characters stood high on the estimation of the public. It may be admitted that their characters are generally pretty correct, but as citizens they are no more elevated either by our constitution or law, than Patrick Lyon. This also I say as my

private and sincere opinion, not one of the defendants, no not either of them is a more honest or upright man than Patrick Lyon. I utter no reproach when I say this, nor will I pay any compliment. Among the extraordinary things in the course of this defence is the doctrine laid down by the opening counsel and, elaborately wrought upon by another gentleman in summing up. What shall the great character of their clients and their great wealth be alone respected in the present decision? Is this matter to go before a jury; surely not. Is it fair in a trial between man and man on an action for damage to make their comparative wealth or the extent of the circle of their respective acquaintances the rule of judgment to guide a jury. Are we to infer that men of wealth and a consequent reputation cannot be actuated by improper motives in the prosecution of an innocent man. Such an inference would be flying in the face of the experience of centuries, indeed in the face of the historical accounts of all nations ancient or modern.

These men then, the rich and honorable clients, of my learned antagonists, may have falsely and maliciously prosecuted Patrick Lyon without reasonable or probable cause, and if so they deserve to pay the penalty of the law. I do not say this in reproach to them, but submit it in favor of my client: while Patrick Lyon in an innocent man, and while I have a tongue to utter the word and convey the idea, I shall never refrain to declare that he is so in my private opinion. I shall never cease to resist the idea that justice is to be decided by riches or influence in this or any other case.

We have been told that this is not a Bank business but an action between its officers and the plaintiff; the officers are however acting for the bank, let this secret be understood, and the cause will be stripped of its disguise; we shall be enabled to account for the interest this cause has excited. The influence of the bank of Pennsylvania has a very extensive range among our citizens generally but more particularly among those engaged in commerce, and perhaps justly so.

We have however been told that the bank in its corporate capacity is not capable of entertaining malice against an individual; but this is a banking business, in which every individual has a common feeling: notwithstanding the efforts to disguise the true colour of this transaction, it has frequently exhibited its true tint. The opposite counsel have evidenced from hour to hour that the bank influence was

still employed on this occasion. We have seen some of them here evincing at this day that they still cling to their old resentment, that they are yet dead to all the feelings of humanity, they even redicule the sufferings the plaintiff has sustained by their malicious and false prosecution. What has escaped from their counsel as well as what was given in testimony justifies me in saying; that this is not the affair of the individuals, but is common to all the party.

It was given in testimony by one of their own witnesses (Mr. Hallowell) that he waited on Mr. Fox to get Lyon discharged, Mr. Fox said he would consult the directors. When he saw Mr. Fox afterwards, he told him the directors determined the law should take its course. The same course seems to have been pursued throughout. Are we to have the influence of the bank brought into our courts of justice, not only to procure an indictment against Patrick Lyon, but even here in the Supreme Court of the State to prevent him from receiving a reparation for the greatest injury ever inflicted on an individual in this country. Both justice and equity forbid it, yet the counsel for the defendants appear to depend for their support principally on that idea.

The counsel speak of rumors in respect of the robbery, why did not the bank examine into them, if they had they would have found them false in relation to Patrick Lyon? But no, having begun their prosecution they will go on. They knew Patrick Lyon to be an honest, industrious, thriving man, they knew him from 1793, and knew him only for superior talents and application with a virtuous and unblemished character, till their blighting influence blasted its growth; I say they knew all this, because they were incessant in their searches, and could not fail to have heared the same as we have done this day from the witnesses at your bar. Have they shewn to you any one action of Patrick Lyon's that would disgrace him in the eyes of his fellow citizens? Not one. If they had searched into his character in the country from whence he emigrated, we were prepared to have met them, and all the concurrent testimony would go to establish his worth and talents, and as such a man, he stands here and calls upon you to repair the injuries he has sustained by the false and illegal prosecution of the defendants many of them cannot however be compensated; the plaintiff may pardon them but he cannot forget them. It is

another extraordinary circumstance in this extraordinary case, that the defendant's counsel should contend that the circumstances of the plaintiff's sufferings in prison should not be taken into consideration by the jury; I never conceived it possible in a court of justice in Pennsylvania, any man however eminent at the Bar, however long or high his standing before this tribunal, should undertake to lay it down as law, that a Jury has no right to pass upon the whole subject. I appeal to the constitution and laws, nay, I go thus far, that if the constitution and laws of Pennsylvania lay down such doctrine as is this day held by Mr. Lewis and Mr. Ingersol, they are not worth keeping over the present day.

But these are not the only extraordinary things we have heard from those Gentlemen, they have told you that the defendants had probable cause to suspect Patrick Lyon, and therefore could not in law be supposed to entertain malice, and that we must prove express malice. You find in the declarations of Davis when he confessed the robbery that no person was concerned but him and Cunningham. Davis was the intimate of Smith the cashier, and has been within the reach of the court, why have they not brought him forward to support the charge made by Mr. Ingersol, that the Bank was opened with false keys, and those keys could only be made by Patrick Lyon. Mr. Lewis insists upon it still that Patrick Lyon was concerned in the robbery, and presses the Jury not to give damages against his clients. Their whole defence goes upon this idea and it will be said that your verdict in favor of the defendants, will be a conviction of Patrick Lyon; strange perversion of justice—Patrick Lyon is a sutor at the Bar of his Country to recover damages from the defendants by whose hands has been inflicted on him the greatest privations, afflictions and injuries that ever was known in this country, and the opposite counsel defend their clients on surmises assumed by them, but without the least foundation, or mention of the smallest fact which might in any possible way have a bearing on the case.

When Mr. Lewis asked Mr. Hopkinson if he was instructed by his client in the way to manage his cause, I told him we were not afraid to meet him on the ground of instructions, let him satisfy the court and jury of the defence he has made out from them. He denies that the defendants

were governed by malice in the prosecution. What, was there no proof of malice in persisting in the prosecution of Patrick Lyon, after the disclosure made by Davis, surely it was express malice. But the learned gentleman evaded this point, by calling up the transactions which occured before the present Chief Justice, and before the Supreme Court, upon the *habeas corpus*, saying, that your opinions justifyed the defendants in the suspicions they say they entertained against the Plaintiff.—Has not this been fully answered, we have avered and proved it that all the facts were not disclosed by the defendants.

These are not the only extraordinary things I am to tell, they charge the present as a novel action, this is improper language on their part; all the novelty in the case arises from their own proceedings or that of their clients.—Regardless of the law or of the constitution of the state, they commence a prosecution against Patrick Lyon for a misfortune occasioned by the negligence of the Officers of the institution. They obtain his commitment to prison, without charging him upon oath, which is an unconstitutional and grevious oppression, he was committed by a magistrate from a place where the alderman had no jurisdiction. Are not these violations of law and of the Constitution, andare novelties to bepermitted to the bank of Pennsylvania and its officers because it is an incorporated Institution. If this is to be allowed aparty however agrieved by such men, are deprived of every remedy intended to be given by the laws. How have they acted throughout the whole of this novel transaction. They raised a clamor against Lyon, which has not yet ceased; The Bank counsel even circulated it, this day at your bar to a crouded audience. Whenever Lyon with a view to illustrate his innocence appeared before a proper tribunal, he was met by the Bank officers, who themselves conducted the prosecution taking it out of the hands of the public prosecutor. They put on the mantle of judicial authority in hopes it might prevent their being sued to answer the damage maliciously done to the plaintiff. I have dwelt so long on this topic because before I come to the case itself, I want to strip it of all its adventitious circumstances and expose it naked to the Jury, when they will discover it to be like the vice that is described in the words of the poet,

> Vice is a monster, of such horrid mien,
> That to be hated, needs but to be seen.

What has been the evidence brought forward to support their defence, let us take it in the strongest light against Patrick Lyon. It is this, that he had the doors in his shop longer than they thought it necessary for him to do the work directed to be done to them. Here you have the very head and front of his offending, unless you add to it that he was a man of the first rate talents in his profession. They have also endeavoured to shew you that it was impossible to rob the Bank without false keys, but unfortunately they have only exposed their own carelessness. The testimony as to the conduct of the officers of the Bank while it was kept in Lodge Alley, shews that the porters had the keys of the cash and book-vaults, when neither the Cashier or Teller was present, they appear to be more careful after the removal to Carpenter's hall, and Mr. Annesley tells you it was the custom to divide the keys; but he does not know who locked the doors.

Mr. Churchman was called to prove that the locks on the cash-vault were patent spring and tumbler locks, and he swore that Mr. Lyon told him so. On this point you have had the testimony of two or three competent witnesses and all of them have proved that the old front door lock with the latches taken out, was on one of the doors. Mr. Wheeler examined it, Mr. Robinson acknowledges the fact to be so, of course you must suppose Mr. Churchman to be mistaken in the fact as it respects the construction of that lock, this is not mentioned to impeach his good character in general, it is merely by way of caution.

But the defendant's counsel have called for the locks to satisfy your minds that the locks are of the nature they were declared to be—I will only remark that the miserable and pitiful attempt to impose at least one of those locks upon you, instead of the true one, was defeated by their own witnesses—Every person who attended to that transaction, must be perfectly satisfied that the true lock out of which Patrick Lyon took the latches many years ago, which he produced here in court, and offered to replace in your presence, was that put by him on the cash-vault door; and for which the officers of the Bank offered you a patent bolt and tumbler lock. If this circumstance is not another proof of the malice they still bear towards my client, I am at a loss to know what it is: It is impossible there can *be a mistake* in substituting one lock for another, it must be

design, and that too of a deep and malignant nature—We challenge them even yet to produce the real lock, and rest our defence upon our performing what we engaged to execute.

What has been the conduct of the counsel on this trial in addition to this? was it fair, was it decent, for Mr. Lewis to insinuate to the Jury that the circumstance of Patrick Lyon going out of town in August was done with a view to prove an alibi and screen himself from a prosecution as an accomplice in the robbery.

This will not do—It is an additional aggravation of the injury already sustained by my client—A man as innocent then, as he is proved to be now.

These gentlemen distribute justice with a very unequal hand. Mr. Robert Ralston informed you of the attempt to rob the Bank in Lodge Alley, on the 5th of August and tells you that Smith came to him under great agitation and informed him that the Bank had been broken open and he was afraid had been robbed of property to a considerable amount, Mr. Ralston advised him to compose himself and act as became a man, but he did not think the agitation of Mr. Smith was a proof that he had been concerned in the affair. Mr. Annesley informs you that Cunningham appeared to be extremely agitated, also in the morning when it was discovered that the Bank had been actually robbed, that he tore his hair and acted as if he was insane and said he should be suspected mark his words "I shall be suspected" He was the porter of the bank and had been inside the building all night—This circumstance was one among others never disclosed to the Committee of the Legislature or to Judge Shippen. We have never heard of those words till this time, If this evidence had been disclosed in the *habeas corpus* the business would have taken a different course. The officers of the Bank appear agitated knowing their responsibility and fearing suspicion might alight upon them, but this is not considered as a mark of their guilt. Yet the moment Patrick Lyon shews any symptoms of agitation, it is considered as evidence of guilt in him. He sickens when he is told he may as well confess, as they have full proof against him, he turns alternative white and red though conscious of his own innocence, lest some wicked and malicious Villain should for a bribe swear to an untruth—Is this not natural—Though innocence can never be ashamed,

yet it may blush on such a charge, made by such men as the President and Cashier of the Bank who you are informed are men of pure morals, one of them the enemy of vice in every shape, and of swearing, and lying in particular. Is this testimony to go before such a grave and sedate body, as the present court and jury! And yet we have been told over and over again that the defendants want nothing but strict law.

As I conceive the spirit of the Constitution and laws of the State, I would join issue, but not under their construction of either.

[Here Mr. Dallas commented upon the testimony produced on the part of the defendant which in strict law he deemed inadmisible, but as their counsel had threatened the plaintiff with an appeal, if it was not received he had waved all objection and the evidence was before them. For he had determined that the case of his client should not be hung up for seven years longer. With respect to some testimony it was intended to produce for the plaintiff, it had been relinquished on account of the unreasonable objections made to its being exhibited.]

Confident in the independence and integrity of the present jury, they had determined to leave it to them to decide. The immaculate and dignified Bank of Pennsylvania, and the high minds of the honorable gentlemen who compose their counsel, and who I suppose act upon their instructions may have all the benefit to which they are entitled in strict law, but we make no objections, convinced that whatever rule is laid down in respect to the evidence of their witnesses will be extended to the testimony given in behalf of the plaintiff.

He wished to know what Mr. Lewis meant by the reference he had made to out-of-door rumors, was this adhering to the strict rules of practice. Mr. Lewis might agree upon the facts as they had been detailed in court, but he has no right to state out-of-door conversations as matters of fact. Does the gentleman mean to insinuate that overtures have been made, it appeared to me that he did. If any thing of the kind has taken place, I never heard of the offer. But I have no hesitation to say on the consideration of all the circumstances of the case, it would have been more dignified for the institution to have come forward and made an offer to the plaintiff, knowing as they did that he was an injured and *innocent* man. They ought to have opened their money

bags to him and let him compensate himself—this would have been the amende honorable, and the mantle of oblivion might have been thrown over their folly. True repentance would have procured a pardon for their unfounded and malicious prosecution of this innocent man—but no, they compel us to struggle to the last, and whatever we may get will be forced out of them by a tedious suit at Law, and the verdict of this jury.

But said Mr. Lewis, this suit was brought late, had the learned counsel have applied to either of his colleagues, or Mr. Stocker, or Mr. Fox, he might have learnt the cause. An action was brought a year before the present appears upon the docket—but owing to an error in the name of John Clement Stocker, it was abandoned and the present suit commenced; I think 'ere this every material fact stated by Mr. Condie in the opening has been fully proved to your satisfaction. I have extended my remarks on these points, not only on the ground of supporting the cause of Patrick Lyon, but, because I know and feel that on the decision of this case the life, liberty and property of every individual of the community are at stake. The high importance I attach to the present question will induce me to consider it further, in doing so, I shall make *three* enquiries,

1st. Whether at any time there was probable cause for this prosecution, and if so, how long did it continue?

2d. Whether the present defendants instituted and prosecuted this charge upon principles of public justice, or upon any improper or sinister motives, Your honors understand me, when I speak of improper or sinister motives, I have allusion to its being calculated to shelter the officers of the bank from being responsible for their negligence, and not for the hope of pecuniary reward.

3d. How we are to form a scale to graduate the damages done to the plaintiff in the present case.

First, Was there probable cause for this prosecution and if so, how long did it continue? In the outset of all arguments, it is necessary to define terms in order to prevent confusion of ideas or the misapprehension of the parties—now what is probable cause? Every man of sense could take its definition from a Dictionary, but no one will conceive it to be founded on jealousy or suspicion alone, the definition of Doctor Johnson, is, that it must be likely or having more evidence than the contrary, he illustrates

this by citing a sentence from South. " That is *accounted probable* which has better arguments produceable for it than can be brought against it—This definition is as complete as any I could obtain, for although I have searched I have not been able to find either at common law or in the adjudications of admiralty cases, any thing that can be of use to the Court and Jury in deciding the point of probable cause in the present action—Nor have our adversaries attempted to shew any circumstances which rendered the charge against Patrick Lyon more probable that the arguments producible against it. But if there even had been probable cause [which I totally deny there ever was] how long on their own ground did that probable cause continue. Every man who does an injury to another does it at his own peril, this is the general rule it is founded on the reason of the case, and I agree with Mr. Rawle, that the interests of the Society are to prevail over those of the individual, and if a person steps forward institutes a prosecution against another for a crime against society, and it turns out afterwards that the accused is innocent, yet the prosecutor shall not be called on to answer for instituting the prosecution, if there was probable cause for suspecting the party, but the gentlemen extend their arguments beyond this point and contend that in no event are defendants liable under the present action.

The exception does not embrace a case wherein there was want of probable cause—or in which due diligence has not been used to ascertain the facts, due diligence has not been employed in the present case, as appears from the whole course of the testimony, of course the defendants are not entitled to the benefit of that plea.

If there had originally, been probable cause to suspect Patrick Lyon, it must have been entirely removed when the discovery was made of the actual robbers, and the money restored. In this preliminary matter, I have shown under all the circumstances of the case, there was originally no proofs furnished against the plaintiff that could give the least ground for probable cause to support the prosecution against him. Second, that the defendants neglected to examine with due diligence into all the circumstances of the case, and continued their prosecution after they knew him to be innocent and third that they persevered in what they knew to be wrong from motives, of

malice actuated by the malignant spirit of persecution, it must have been from a desire to screen themselves from that opprobrium which would necessarily follow on the proof of their carelessness and negligence in the execution of the duties they were employed to perform.

I will now proceed to class the facts into five different periods.

1st. In reference to the period before and at the time of the robbery.

2d. As to the state of the facts as they stood, at the first examination of Patrick Lyon before Mr. Stocker.

3d. I will consider the facts in relation to the second examination.

4th. Then as they stood at the time of the detection of Davis.

And 5th. As they stood at the time of the prosecution and rejection of the Bill indictment in January 1799.

The course I am pursuing, is that which duty compels me to follow. What I do, I do without malice or ill will to the defendants; but it is of importance to the case of Lyon, that this jury should understand in what manner the business of this Bank has been conducted. In shewing this, I shall shew that there has been a systematic carelessness; which for a long period has exposed the vaults of that institution to the depredations of its inferior officers; that by a continued carelessness the doors of the vaults have been neglected, by those in whose charge they were placed. I will not attempt to shew the motives or the end of those officers, who were intrusted with such an important charge; as the wealth of that institution; these must be inferred and understood from the facts: nor will I go so far as 1796, when the president, Mr. Barclay, fled from the direction. We have in evidence, that not six months before the robbery, whilst the Bank was kept in Lodge-alley the front door was found open ajar; the witness to this fact, is one of the watchmen, he said he went to Cunningham who slept in the bank, and asked him if the door had been locked? he said yes, but the witness answered him—no, it was not so—he afterwards communicated this circumstance to Mr. Bickham. This is a strange transaction, the in-door porter leaves the Bank door open, the watchmen discovers it on a jar, and informs one of the directors, yet it does not appear

that any enquiry was set on foot, or any measures taken to prevent the like in future.

Before we come to the 5th of August, when an attempt was made to rob the Bank, let us see how the keys were disposed of. The outer door is admitted to be in the hands of the porter, true, Mr. Annesley said the keys of the cash-vault were not, also left in possession of the porter, but he does not say they were not accessable to him. If you believe Coldwater's account of the disposition of the keys, I believe every difficulty will vanish from your minds, as to the means by which the robbery was effected—You must believe him; and his testimony is positive. The porter had the keys of the cash-vault entrusted to him; how did he know this? he says in answer, I know they had the keys, because before either the Cashier or Teller came to the Bank in the morning I have seen them bring out the books and the money. Here Mr. Lewis wanted to shew that Coldwater was mistaken because it had been sworn that the books and the cash were kept in separate vaults. This might be so, and yet Coldwater might be perfectly correct, for the porters might have had the keys of both vaults. It would be less dangerous to entrust them with the books of accounts than the specie. But it appeared in evidence that the Bank notes were kept in a port folio, which in form and outside materials, may be considered as a book, and this is sufficient to justify the witness in declaring that he had seen the porters bring out the books and the money.

Let us now approach the attempt to rob the Bank on the 5th of August, 1798. From the testimony of Mr. R. Ralston, it appears that on the morning of that day he was informed that the Bank door had been found open by Potter, one of the porters, that the door of the cash-vault had been forced or wrenched two inches, or an inch and a half from the jamb, but the lock was unbroken; on entering the vault they found nothing had been taken away, and this circumstance put an end to all enquiry; no questions were asked, as to the manner or mode employed to open the front door, however the lock was opened, and must have been opened with either the true or a false key—the whole of the defence set up by the defendant's counsel, is a jingle of false keys and Patrick Lyon. Here was an opportunity of ascertaining from Cunningham who had been trusted with the keys, whether the door had been opened by the true or a false

key, but no enquiry is made on that point. It appears from the Journal of the Assembly on the report of the committee, that on the night of the 4th August, some villains *entered* the Banking house. The committee must have obtained this information from the officers of the institution, but they omitted to state to the committee how the Banking house had been entered; if the lock had been forced it would have been reported, as in the next line they say an unsuccessful attempt had been made to force open the door of the cash vault, and to pick the lock of the iron chest used by the second teller—how did they know that an attempt had been made to pick the lock?—nothing has been given in evidence in this court, that such an attempt was ever made. Mr. Ralston speaks only of the door of the cash-vault being forced. But these gentlemen who are so communicative to the committee, appear to be determined to introduce false keys; for in a subsequent paragraph they insinuate that the subsequent robbery could not have been committed without the privity of Patrick Lyon, the smith employed by them on the iron doors of the cash-vault.

Even here they have overshot their mark—although they introduce the idea of picks, they cannot suppose that Patrick Lyon had any thing to do with that attempt. They do not pretend Patrick Lyon knew any thing of their doors or chests, their locks and keys while the bank continued in Lodge-alley. Patrick Lyon they tell you was suspected because he had fitted the doors to the cash-vault after the Bank had been removed to Carpenter's-hall, but with all their extravagant suspicions of Patrick Lyon, they will not I presume go so far as to suspect him of opening the doors at the several times they were found open in Lodge-alley—no, if they were not determined to be blind on the side of Cunningham, there was light enough thrown on that transaction to cause them to suspect Cunningham. And if there was then sufficient ground of suspicion as to their porter, has that ground been removed by any subsequent circumstance, were the locks on the doors of Carpenter's-hall, the same as those used in Lodge-alley; the testimony of all the witnesses who speak of the fact, agree that the lock on the outer door of the Bank in Lodge-alley, the key of which was entrusted to the porters, was the lock which was put on the door of the cash-vault when the Bank was removed to Carpenter's-hall, it had been some time laid by, says Mr. Robinson, but it

afterwards was put on the door of the book-vault in Lodge-alley; when the latches it contained being found inconvenient he took it to Lyon to have them taken out. This corresponds with the testimony of Mr. Fox who worked for Mr. Lyon in 1795-6 and 7, "that in the summer of 1797 Mr. Robinson employed Lyon to make two iron doors for the book-vault in the bank in Lodge-alley, and Robinson proposed putting on two old locks, to which Lyon objected, as the locks were insufficient; one of those locks belonged to an old room door, the other had a brass bolt—the witness did not think them to be safe, and he is certain he could have got ready made keys at any of the ironmongers to open them."

This is further confirmed by the testimony of Mr Garretson, who says that Lyon found fault with the lock, Robinson had just brought in, when he was fixing an iron door that was going to be hung; Robinson said it was the best he could get in Philadelphia, yet Lyon still insisted it was not good enough for a Bank door. Mr. Churchman however says that Mr. Lyon declared the locks to be the patent spring and tumbler locks which no man in America could pick, but he is so confused that it is better to take the testimony of those who were more acquainted with the business. Am I correct in the history of these locks? I have not recurred to the testimony, but if there is any doubt I will do it.

I will now transfer the attention of the court from the scene in Lodge-alley, to that in Carpenter's-hall: but before I pourtray it at length I will mention an incident altogether isolated; the counsel examined Mr. Robinson as to a conversation between him and Cunningham—who asked him if he knew where Patrick Lyon's shop was, and whether he knew what vaults the doors were for? He thought he told Cunningham that Lyon's shop was in Lombard street, but being desired to recollect, whether he told Cunningham or Cunningham told him, he answered it was either the one or the other. What bearing has this on the present case? If indeed they had gone further, and shewn that there was an intimacy between Patrick Lyon and Cunningham, or that the latter had been seen at Lyon's shop, the circumstance might have been bolstered up into the appearance of something—but standing unconnected with that question; how can it relate to the present cause.

Mr. Rawle, in his opening astonished me, when he said the doors were in Patrick Lyon's possession an unne-

cessary length of time, and that he said appeared to be for the length of three days, for the purpose of doing the work on them that was required. I will not say what weight the testimony of Mr. Wheeler might deserve on the time necessary to perform the smith's work ordered to be done, in altering and fitting the two doors: but if Mr. Robinson could do it all in the time he mentioned I should think him not only an expert mechanic, but an excellent magician—however let us enquire truly as to the time the doors were at Lyon's shop. They were taken there on Thursday afternoon—Lyon and Robinson examined them during that afternoon, and had to take measure of the staples and hinges, the alterations of the locks, &c. the fitting of hooks to the old eyes in the wall—Robinson calls upon him on Friday afternoon, finds him at work upon the doors, but does not think Lyon had got as far as was expected, and told him if he expected to do the bank work, he must be more punctual. Lyon does not court the employment. At this visit Robinson was accompanied by his friend Davis, he called again the next morning, and finds Lyon busy on the doors, he does not discover the locks lying loose or taken apart; which the counsel at one moment insinuated might be the case, but that must be considered very unlikely, as Lyon worked then and does still constantly in the view of the public; his shop door is open during working hours. The doors were returned on Saturday afternoon in time to have one or both of them hung—so that in fact Lyon had them in his shop only two days, the half of Thursday when they were received seems to have been employed in ascertaining what work was to be done, and how it was to be performed.

Now if the President of a Bank shall say that the work for the institution has been delayed half a day more or less, the Mechanics of Pennsylvania, hold their liberties, character, property and lives, on a most precarious tenure, on the opinion of a man who knows nothing of their business. If any mechanic shall keep a job half a day longer than was expected, every other Bank, may, with equal propriety, bring a similar suit on the like accident—and if every Bank has this right, so has every other employer.

But Mr. Fox never attempted, I presume, to be a judge of the quantity of this kind of work which Patriek Lyon could do in a given time; he must, it is presumed have taken it from Mr. Robinson; and Mr. Robinson says

reposed in these porters, there was no teller, but Mr. Annesly, at the time, and he was at a distance from the vault, and he cannot say that he saw either the outside or inner door of the cash vault locked; Mr. Smith, the cashier, also appears to have had perfect confidence in Cunningham. Now combining these circumstances, the probability is, that Cunningham deposited the money and the teller's box in the cash vault, put the doors to, but purposely omitted locking them. I did ask Mr. Annesley, expressly, who locked the doors? he replied he could not tell. I asked him whether the inner door was locked in the morning? He said the inner door was opened by Cunningham, but he cannot say whether he unlocked it or not. Now, if you suppose with me, that Cunningham had purposely omitted to lock the doors, having such a fair opportunity of leaving them open he could admit his accomplice Davis, as he slept in the bank; either before the watchmen took their stand in the evening, or in the morning after they had left it, that the whole contents of the teller's box were already prepared by Cunningham to be given to Davis, who went out with it leaving the back door open after him, and in the condition it was discovered at six o'clock on Sunday morning, by Mr. Annesley.

The whole of this translation is perfectly reconciled by admitting that the porter, as usual, deposited the mony in the cash vault; that he only affected to lock the doors, but did not lock them at all. Then why not suspect the porter? Why not enquire of him as to the robbery? Was he totally unsuspected? Had not Mr. Beakham notice given him of the bank door being left open, or closed to by a stick of wood set against it in Lodge-alley.

Judge Yates, that was after the robbery.

Dallas—no—it was after the robbery that Coldwater mentioned it, but the fact was that the door had been left on jar, six months before, and ought to have been known by the officers of the bank, as well as the attempt to force the door of the cash vault in Lodge-alley.

Suppose again that Smith or Cunningham, actually locked the doors of the cash vault on Saturday afternoon; I ask what became of the keys? Annesley says one was brought by Smith to him, whilst in the bank, the other Smith put in his pocket. This they consider as very important testimony to shew that Cunningham did not use the true keys. I think

it should be considered equally important to satisfy the jury where the true keys were on Saturday night and Sunday morning. Annesley said his key was hung up in his parlor, but did it remain there, or was his parlor inaccessable? Was not it natural for Smith when he came to the bank in the afternoon of Sunday and found the doors unlocked, to have produced his key and ask Annesley to produce his likewise? Yet not a syllable of the kind was uttered when they came to the bank together. You hear nothing from Annesley about Smith, taking his key out of his pocket on Sunday, though he was very particular in stating, that he put it into his pocket on Saturday afternoon.

Where was Smith's key the whole day? Was it in his pocket or was it hung up in his parlor like Annesley's? Or had his confidential porter, Cunningham, it in his possession? Or had Davis, his companion and bank lounger, no access to it? These ideas never occur to those, to whom they ought naturally to have presented themselves. They now think of nothing but of Patrick Lyon—false keys and Patrick Lyon—but before I have done you will perceive that the true keys and official negligence ought to be the burthen of the song.

Annesley says nothing of his key till Sunday afternoon and then he does not tell us that he even found it hanging up in the same place he had left it—neglect of keys! Open doors time after time! Confidence in porters! Non-performance of duty! What do you now think of this part of the case?

Annesley says he found the back door open, and that it must have been opened from the inside. Well what does he then do? He leaves the treasure in the hands of Cunningham, whilst he goes in search of Smith, in which search he had been misdirected by Cunningham—we hear nothing of the keys yet, the doors are still left open, and though we are told that the gold and notes contained in the teller's box was gone yet all the treasure was not gone, now what was to prevent a second robbery. A more extraordinary circumstance never did occur!! And what comes of it? A charge against Lyon, and an approbation of Cunningham—strange perversion of common sense! but we shall shew this madness had a meaning.

I infer that as Smith did not produce his key, he had it not, he had left it with Cunningham, or it had been taken from

him without his consent by his friend and companion Davis, who was in the habit of visiting and dining with him; that Annesley's key had also been procured by Cunningham, who had the robbery in his head, knew the house, and probably the place where the key usually hung in the parlour, for he had often brought the keys down in a morning to open the vaults when the business of the institution was to commence—he might have watched an opportunity, first of taking it, and then when Annesley went after Smith he might have returned it to the place he took it from.

But why go to this mode of reasoning, we have a nearer cut in the testimony of William Fox, we discovered, that the locks used by this bank were of such imperfect construction, that they might be easily opened, he tells you, that while he worked for Patrick Lyon, they made two iron doors for the book-vault, that Lyon objected to putting on the locks that were sent him, because they were insecure, and desired Robinson the carpenter to inform the president, that it was certain, that any man might get ready made keys at Richards', or any other ironmongers to open them. Now, it was only necessary for the porter to have had possession of Mr. Smith's key at any period for an half hour, to have gone to any ironmongers shop and bought its fellow, he might have had the opportunity of obtaining the key of the second door, and in the same way obtain its fellow likewise. When has it been said, that the bank was opened by external violence? Never! I will not calculate on the testimony of Coldwater, though I think he is very clear, and greatly to be relied on, but it appears from the testimony of others, particularly of Mr. Ralston, that the attempt to rob the bank in Lodge-Alley, was from the inside, so it was in the actual robbery, Cunningham was in the inside, he had either left the vault doors open when he pretended to lock them, or he had opened them with Smith's key, which he had in his possession, and with Annesley's, which he had purloined; or he had previously procured from the ironmongers, keys belonging to other locks of the same construction. For keys, he had none from Patrick Lyon.—Neither is there any difficulty in letting his accomplice into the bank before the watch was set, nor of letting him out when they have retired—Annesley comes down finds the door open, calls down Cunningham, who appears almost frantic, and declares that he shall be suspected. He who had left the doors open before:

he who had left the doors open now, and declares he shall be suspected; if I understand human nature, this man plainly told the officers of the bank probe me I am suspected, and you will get the information—but no! every circumstance was overlooked and why.—Never let the public think, but that the robbery was perpetrated otherwise, than by false keys obtained from Patrick Lyon: never let it be thought, that any person connected with the institution was guilty; we are all parties, whether president, cashier, teller or porter, we are all confidential persons employed by the institution. Annesley and Smith may say we had the keys of the vault, but you Cunningham was in possession of the bank, let it not be thought that any of us neglected our duty.—To keep up the farce, a warrant is obtained from alderman Jennings, for the apprehension of Lyon, and Cunningham makes a still greater dupe of Mr. Annesley; what power of deception did Cunningham possess to prevent the operation of common sense? they saw what was done, they heard what was said, but they neither heard nor saw what was evidently upon the surface, the magic jingle of false keys and Patrick Lyon operate even at this day, to obnumberate the senses of this court and jury! certainly in the opinion of the defendants counsel! or they would not dwell on the unfounded suggestions of false keys and Patrick Lyon!

The principle affair of the officers of the bank at length arrives; now the definitive step is to be taken; the officers of the bank are at risk, they are at risk, for their negligence! not for mere negligence! but for gross negligence! I will not say for their participation, yet if suspicion is attached to my client, they themselves are to be more suspected: false keys and Patrick Lyon—what? true keys and Jonathan Smith! the latter we know existed and were in his hands; the existence of the former cannot be proven here, nor never will, even at that great day in which we are to answer for all the deeds we have done on earth.—But, what has become of the real keys? that of Mr. Smith has never been accounted for up to the present day; it has never been produced, even, to the officers of the institution; Annesley's key was not accounted for, till Sunday afternoon—yet these gentlemen guardians, of the public property, guardians, of the property of the stock-holders, talk of their proceedings against my client as founded in the pursuit of public justice!—does not public justice cry aloud for them to account for their negli-

gence and misconduct? Cunningham was not examined at all! yet it was evident the robbery was committed from the inside, and he alone lodged inside.—The watchmen were suspected who were on the outside.—What, a shameful and base mode of selecting victims! Cunningham, who lodges in the bank, is not inquired of, while the porters are outside, and not all the time on the watch, (that being set in, the evening and taken off in the morning,) are to be threatened with a prosecution, for circumstances of which they knew nothing. In all cases they turn their faces averse from Cunningham, but towards Patrick Lyon their eyes are constantly directed. The president takes out a warrant against Patrick Lyon, but he cannot find in his heart to distrust Cunningham.

It is really an extraordinary thing, that without a single fact in his possesion, he should continue to pursue the innocent, while he lets the guilty escape unnoticed—that the stock-holders should be the dupes of such conduct, that the state legislature sustains the imposition may be considered a public calamity.—Gross negligence in a fiscal office, is good ground for a removal, it can never recommend to a re-election.—I impute no motives to those gentlemen, who are defendants in the present action, other than is injoined on me by the duty I owe my client Patrick Lyon. I believe, when we come to that ground, and we shall come to it by and bye, that the carelessness of the bank officer, was a more powerful motive in their minds, than any suspicion of his guilt, on account of his being an ingenious smith. In order to disguise the apprehensions they entertained at that time, Mr. Annesley tells a curious story, about his going with Cunningham in search of Patrick Lyon's shop, they went to his house also, and found it thus, they discovered a cobweb in the key-hole, and a neighbour of Lyon's told them that he had been gone a fortnight: this being true, they must have known, that he was not in town at the time when the robbery was committed; yet the defendants counsel have declared that this was a contrivance to avoid suspicion, the witness told you that he heard three men in conversation, one of whom, said that he had seen Patrick Lyon, in town the day before. I asked him his name, he answered, it was John Boyd a bricklayer, who lived in Southwark; the next day September the fourth, the proclamation was issued, by the government; at a time like this, is it at all extraordinary, that people should hold conversation at the corner of the streets

of a robbery so flagrant, sure, there is nothing extraordinary in that! but I will tell you something that is extraordinary; after the witness had been informed who Boyd was, that he should go on a fruitless errand, in search of a man of straw, when the real man could be found at hand; look at the conduct of Lyon, was it necessary to seek for him through these avenues? surely not, for no sooner was he made acquainted with this *fuss*, than he immediately returned to Philadelphia, and surrendered himself to the first magistrate, with whom he was acquainted, the defendant Stocker. I will skip over all that part of the testimony which goes to prove that Mr. J. Boyd, the only bricklayer of that name, who resides in Southwark, knew nothing of the matter; what was intended by this story is difficult to understand, it is the tittle tattle of a stranger, was it of real importance?—Why was not the stranger produced here?—When I hear of the defendants' counsel asking for *strict* law, I wonder why they have not confined themselves to *strict* evidence, shall we mete to them out of their own measure, and set aside their testimony as well as their argument:—They prove, that Lyon was out of town, some time before the robbery; they say that he absented himself to avoid suspicion, and yet his friend Lace, voluntarily informs the high constable, that he is down at Lewistown, and says, if Lyon thought himself suspected, he knew he would return immediately.

Cave told Smith the same, that Lyon would come back if he heard he was suspected, for he was an honest and industrious man. Smith, said at that time, that Lyon was certainly the robber, nor did they look to Cunningham till seven days after.—I don't say, that the bank acted improperly in looking after Lyon—no. They were right in examining into the conduct of every person they employed; but why so blind to their own porter and their own friends? Why was not an inquiry instituted as to the conduct of Mr. Robinson, their carpenter? He took the doors of the cash-vault or book-vault, or whatever vault they belonged to, he knew their destination, Lyon new nothing about it. He bought one of the locks of Mr. Simmons, he brought the other to have the latches taken out, he kept company with the robber Davis; yet he was not suspected! no, their eyes were directed solely to Patrick Lyon: I do not mean to impeach Mr. Robinson, or say that he was concerned in the robbery, but I question these gentlemen, why not direct their enquiry to these men

even in preference of looking towards Lyon? Here the way laid open, was strait before them, and here they might have overtaken the plunderer. Why then pursue Patrick Lyon in a bye-path? Did they send a search warrant after Davis? He was the respected friend of the cashier. Did they send a search warrant after Cunningham? No. He was their confidant. Did they send a search warrant after Robinson? No. He had their entire confidence. But Patrick Lyon possessed superior abilities; hence he became their victim. And how did they pursue him? They ask *strict* laws; in *strictness* of law, they persecuted, not prosecuted him. Was there any oath? Did they dare to put their suspicions on that record? No. No oath was ever taken until he appeared before judge Shippen on the *habeas corpus*—neither when he was before alderman Stocker, on his first or second examination, do we hear of any oath. Let me correct myself: nor when he was before judge Shippen, nor when he was before this court, nor until this trial, have we heard that the original warrant was issued, contrary to law, and without an affidavit to support it.

I leave this point, with saying, that their suspicion of the persons concerned in the robbery, namely, their own porter, ought either to have preceded or been co-eval with the robbery. Whether precedent or co-eval, the enquiry ought to have been directed to their own officers; unless the president and cashier meant to cover and secrete themselves in the dust they raised by hollowing in the whole country to join in the pursuit of the Lyon.

They have brought forward something from Hiliary Baker, which by the bye, was altogether unnecessary; for he possessed no official information; it contains nothing but threatenings against the poor watchmen, all of which ended in *fums*. But did Mr. Fox or any of the officers tell their story before judge Shippen? I cannot say that they did; yet they are honorable men, all honorable. They ask *strict* law. Now notice the language of the law—the suppression of a fact is equivalent to a falsehood.

When they talk of the decisions of judge Shippen, and this court, they ought to remember, that they never told the whole truth. O, fie, fie upon them!—I beg you to attend to this; they never produce the examination of Davis at either of those periods, nor have they produced it now. In their communication to the legislature, they spoke of it—

in what way they best know; they have never mentioned their suspicions, but as it respects Patrick Lyon, whom they had no right to suspect; nothing ever appears to have occupied their minds but false keys and Patrick Lyon.

Will they tell me why they did not examine Cunningham? He survived some days after the robbery; he had shown so many circumstances of suspicion by an affected agitation; by preparing pistols, in order to secure the stable door, after the horse mas stolen. Upon this conduct again I exclaim—O fie, fie! Argument will be thrown away; there is not a member of the court, or the jury, or a by-stander, but would think I was attempting to illumine a sun beam.

I would wish to stop, for I believe I have demonstrated the futility of the defence, which has been set up; I feel myself exhausted, and if it is not pressing upon the court to decide this evening, I would ask their indulgence to proceed to-morrow. Then I will proceed to discuss the doctrine which our adversaries laid down as to probable cause.

The court consulted for a moment, and agreed to adjourn over till to-morrow.

Wednesday, Dec. 18, 1805.

Mr. DALLAS, in continuation.

While the bank of Pennsylvania amuses the public, with the jingle of false keys; Patrick Lyon arrives at Southwark, and surrenders himself to alderman Stocker. If this is not an extraordinary circumstance, it is however conclusive, that Patrick Lyon had no concern in the robbery; nor did the officers of the bank, at that time, believe that false keys existed. If they believed that the vault doors were opened by false keys, I will ask them, why they suffered the same locks to remain upon the doors, as they might at any subsequent period be opened again with the false keys; for they do not pretend that they were so fortunate as to obtain possession of them from Davis, or by their search at Cunningham's. It appears that they did not take off the locks even for examination, till the 9th of November, when Mr. Wheeler examined them, and replaced them on the same doors; and it does not appear that the same locks were removed at all while the bank remained at Carpenter's hall; and for any thing we know to the contrary, the same doors and locks were placed on the cash vault at their new build-

ing in Second-street, and if Patrick Lyon ever made false keys to those locks, for all they appear to know to the contrary, they may still be in his possession, and may hereafter become the means of another robbery. This must appear to every candid mind as a conclusive proof, that the officers of the bank do not believe that the doors of the cash vault were opened by false keys.

We will proceed now to the second period. Cave, who had been a watchman at the bank, told Smith on Thursday, that he believed Lyon to be an honest and industrious man, that he was gone to Cape Henlopen, and he was confident he would return immediately, on hearing he was suspected. Mr. Lace also told Haines the constable, where Lyon was gone. Haines pretended that he wanted Lyon to do a job of work for him, and afterwards when he found out that Haines was a constable, and that Lyon was suspected of the robbery, Lace told him if he had stated that to be his business, he might have had Lyon in town by this time. Lace offered himself to go and take Lyon, if he was empowered; for so certain was he that Lyon was innocent, that he would surrender himself to a child. Nor was Mr. Lace mistaken in this opinion. The first intimation Lyon had that he was suspected of being concerned in the robbery, was from Mr. and Mrs. Hunter; whereupon he sets off immediately for Philadelphia, and trudges on foot from Wilmington to Southwark. With little money for his expences, and with great fatigue both of body and mind, he surrenders himself to Mr. Stocker in Southwark, and relates the story of his interview with Mr. and Mrs. Hunter, and all the circumstances which led to it, as well as those that succeeded, to the time he appeared before Mr. Stocker. You find his narration in part supported by Mr. Lace; if there is a mistake in any part, the bank has had sufficient time (and I have no doubt but sufficient disposition) to have exposed it. That not having been any, justifies a belief that it was not in their power; and we are to take his statement as perfect throughout. It shows that he acted in the spirit of conscious innocence, for he set off immediately for Philadelphia; but, says Mr. Ingersoll, the summons that told him of the robbery, told him also of the death of Cunningham, who might have been a witness against him. I do not believe, that that gentleman uttered this expression as the dictate of his heart; it must have been in consequence of the instructions of his employers, and dic-

tated by the same spirit of malevolence, which has dictated the whole of this prosecution—it is *ex post facto*—it is a trick of cousel to mislead. Cunningham lived five days after the robbery, which brings us down to the 6th of September; but he had not been suspected until the 12th, when the search warrant was issued; he was left in possession of the treasure after the robbery, and retained the confidence of the institution. What then had the public to attract their attention to him? To them he was no object of enquiry. Why then should the fact of his death be incorporated with the report of the robbery, when no person suspected him to be concerned with it? But if Mr. and Mrs. Hunter mentioned, or even knew of the death of Cunningham, why have they not brought him or her here; they are within the reach of the defendants; the process of the court would compel their attendance. Then the rule of evidence applies, that if the parties decline to produce the best evidence the nature of the case affords, when in their power, they shall not be allowed to support themselves on inferior testimony, much less to make testimony by drawing it from inferences.

The voluntary surrender of Lyon is a mark of conscious innocence; but the prosecution of him without probable cause, and even against acknowledged facts, is a strong mark of malice; by which the defendants have rendered themselves liable to make an atonement to the plaintiff in damages; and I claim from this jury the same quantum, that every individual of them would think himself entitled to, if he had suffered a similar persecution.

Mr. Stocker is said to have been an acquaintance of Lyon's, and at first to be favorably disposed towards him; suppose it to have been so; what but the malicious and hostile spirit of the officers of the bank induced him to alter his conduct? Could alderman Stocker, director Stocker, after having a full communication made to him of all the circumstances of Lyon's return from Lewistown—after Lyon's leaving Mr. Stocker's house, to lodge at a tavern, and his return in the morning—could he conceive Lyon to be either a principal or accomplice in the robbery?—If Mr. Stocker thought there was probable cause, or any ground to suspect Lyon, he would have had him confined the first evening, and not have permitted him to go at large for the night. Next morning, when Lyon repaired to the house of Mr. Stocker, he found Mr. Stocker had gone for Messrs. Fox and Smith; they

came back together, and brought another magistrate with them; they found Lyon waiting for them. Here was an array against an individual, without a friend or counsel—it must have appalled even an innocent man. I know not the strength of Lyon's nerves, but I do not wonder at his being thrown into some confusion; he would naturally feel the delicacy of his situation, and conceive them all allied against him, if only to screen themselves. He might fairly reason thus: Although I am innocent, yet I cannot alone guard against their formidable contrivances.—They make him tremble by uttering what he knew to be great falsehoods; they tell him they can prove him to have been in Philadelphia the day before the robbery; that they have full proof of his being concerned, and he might as well confess. Under these charges and assurances, and considering the situation of Patrick Lyon, exhausted after a long journey by fatigue, and in want of sustenance, without rest or sleep to restore his faculties, he becomes pale and requests a glass of water; they give him a little wine and water, and then they proceed in his examination. They have talked to you here of Lyon's examination, but such of you gentlemen as are acquainted with proceedings before magistrates, know, that all the conversations which take place there, are not reduced to writing. Do you believe that during an examination which lasted the whole morning, that the whole of it is reduced to the compass of this half sheet of paper? [*producing it.*] Yet it is said, that his turning pale and appearing agitated, was a mark of his guilt, and Mr. Wharton said it was a proof, and it was strengthened by his firm denial of his being concerned in the robbery, and of his constant assertion that he was innocent. These were facts in Mr. Wharton's judgment, that authorised his commitment. Sincerity of opinion, or that he sincerely believed Lyon was guilty, is not the criterion on which this action must be defended! No—it must be probable cause. A man may believe the most absurd things in the world, but where is the reason for it? The reason in a court of law must bear up that belief; the sincerity of the opinion on the part of Mr. Wharton, and adopted by Mr. Stocker, is no proof that the opinion is correct.

Judge YATES. In Term Reports, 545, Sutton versus Johnson, that opinion is explained.

DALLAS. Yes sir, but many a well grown child has been made to believe, that the moon is made of green cheese; that

is not a proof that it is made of the curd of milk, or the juice of herbs, nor does it shew that there is any probable ground for the belief.

There is an extraordinary use made of this examination before Stocker. Lyon is laid on the bed of Procustus; if he is too long, he is to be lopp'd; if he is too short, he is to be stretched: on the first examination, he appeared to them to be too short—he did not enter sufficiently into detail; on the second examination, he entered into a too diminutive detail, therefore he was too long. In the first he does not mention the conversation that passed between him and Robinson, in the presence of Davis, at Market-street ferry, and therefore he was deficient. On the second examination, when he does mention that circumstance, he exceeds their wishes. Mr. Fox says that Robinson is a good man, and Davis is an amiable one. Had Lyon disclosed this circumstance on his first examination, it would, no doubt, have been in the same manner that it was on the second; but I think it is probable it was alluded to on the first examination—and although we were not at liberty to produce testimony on that point, because it would not be *legal* testimony—for I find in Lyon's narrative, that he had asked of Mr. Hunter, whether Robinson was suspected—this is external evidence to me, that he made some allusion to Robinson and Davis, when he was first before alderman Stocker.

There is also some internal evidence, that Lyon was not concerned in the robbery. The bank lost at that time upwards of 160,000 dollars; Lyon had not received any part of this sum—otherwise he would not have been obliged to pledge his watch, for the mere expences of his journey from Lewistown to Philadelphia. Now if he did not pledge that watch for such a purpose as he told them he did, they could, by this time, have proved it. Why has not this strong circumstance made some impression on their minds? It is strange that in the plunder of a bank of so large a sum of money, he should not have received some part, if he was the principal instrument of effecting it. Davis had the money, and the principal part was recovered from him by the bank. Lyon, who never saw Davis in his life but in company with Robinson, is suspected, while his daily companion Robinson, is deemed an honest man.

They do not pretend to connect Cunningham and Lyon, nor Davis and Lyon; but *cui bono*, without this, why should

Lyon be suspected of making false keys? Should he run all the risk, by placing himself in their power without providing some security for the receipt of his share? Should he leave the work to be accomplished by them, while he went away? Does this comport with what they say of his good sense and understanding? No. I see in it nothing but a mark of his innocence.

If the enquiry had been instituted into all the circumstances of the case, the sincerity of the opinions of Mr. Wharton and Mr. Stocker, might have been tested in twenty-four hours; and that it was not done, is a mark of gross negligence; and could only be inspired by the malevolent spirit I have so often mentioned as actuating them.

Well, they contrived after this, to induce the legislature to say, that they used unceasing diligence in searching into this affair: if they did not do so, they were guilty of an imposition; and they must not now be permitted to take advantage of their own wrong. At this moment, their story of hunting of Boyd at West-Chester, to give the proof of what they had heard through Annesley, of the tittle-tattle at the corner of a street, will pass for nothing; as it is proved by the testimony of Lace, that he had told their agent Haines, that Lyon was 150 miles off at the time. It cannot be urged as an excuse for the negligence of the officers of the bank. But the disclosure of Davis ought to have put the question at rest. The moment that was made, if ever a probable cause existed to suspect Lyon, that moment it was annihilated; all idea of his participation in the robbery was at an end. What, was Wharton's advice still to be pursued—which had been adopted by Stocker, because Lyon had turned pale? No. But they talk of allowing Lyon to give bail to the amount of the whole property stolen. Is it possible—does any man think that such bail could be obtained? I venture to say, that neither Patrick Lyon, nor any other man in Philadelphia, under similar circumstances, could obtain bail to that amount—the bail proposed was enormous; and our constitution declares that excessive bail shall not be exacted. What but malice could actuate any man to demand such excessive bail, in the face of a constitutional injunction to the contrary? If at any one epocha of this transaction, there should have been considered that there was probable cause to suspect Patrick Lyon, (which I deny,) that period elapsed on the discovery of the robbers,

Davis and Cunningham, and their being re-possessed of the money.

The provisions of our constitution are not to be violated with impunity. Hence a *habeas corpus* was sued out for Lyon's appearance before judge Shippen. When the enormity of the bail was made known to him, he reduced it to 6000 dollars. Was this the exercise of his free judgment? Was it to serve Lyon, and not to destroy him?—or was it to shelter the officers of the bank from a prosecution by the plaintiff for damages, on their proceeding without probable cause against him? Was it not exacted by the bank officers in order to continue him in jail, where the fever then raged, in hopes that it might destroy him, and then fix upon him their trump'd-up story of the fabrication of false keys, and under that, effect an escape themselves, from the suspicion of extreme negligence in performing the duties of their office? The whole proceeding appears to me to be not only malicious, but extremely cruel—for which the laws of this country afford no adequate punishment.

They ask bail to the amount of 160,000 dollars. From whom? From a poor, though honest and industrious mechanic! For want of this bail, they send him to jail; where he remains from the 21st of September, '98, to the 14th of December; during which time the principal is taken, and they obtain from him their money. He is thereupon suffered to go at large, while the accomplice, as they call him, is confined in a cell—cruelly, most cruelly treated. I will not enter into the transactions at the jail, in this part of my argument; but perhaps I may notice it when I come to speak of the quantum of damage to which I think my client entitled. Who has he to contend with whilst confined in his solitary cell? His sufferings call up all his feelings; he reflects; he suspects Robinson and Davis; on the latter his suspicions are well placed—but what did he dare to do? Robinson was interested to secure the patronage of the bank, whilst it was in contemplation to erect their superb building in Second-street, by which he would make his fortune. Yet still the probability is, that in the conversations which took place before Stocker, that there was an application to the conversation which took place at Market-street ferry; but I do not contend that any thing more than a slight intimation was given; for an honest man, in the situation of Lyon, suffering under a slight suspicion, if any at all, would not, on slight

grounds, expose a man so respectable as Robinson, the principal workman at the bank. Of Davis he knew nothing; but, nevertheless, he was familiar at the bank, an acquaintance of the cashier's, and an intimate of Robinson's, it would not be surprising if he would be altogether silent with respect to those men, for when he did mention them, Mr. Fox told him to be cautious in what he said, for Robinson was a man of character, and the stranger Davis equally so.

Nothing happened from the 21st of September till the 20th of October to Lyon, who was immured in solitary confinement, where he was left to his reflections. Innocent himself, he looks around with caution, before he would venture to put othes in possession of the opinion he entertained. It has been said, that Lyon declared that he had a discovery to make, if he was taken out. Is it true he made such a declaration? No. He said he thought he could give them a clue, which if followed up, might lead to some information; but Haines makes his own representation of this conversation tending to entangle him still further. I am surprised he ever got rid of this labyrinth. The *dignified* president of the bank of Pennsylvania leaves Lyon still in jail, under the stigma of the robbery, when he might, by following up the clue, have discovered the offenders. This is not the use generally made of such communications; and I have no hesitation in saying, the conduct of the defendant was inconsistent with the principles of justice and humanity. They can, however, do nothing but what turns in their minds to be a proof of his guilt; they will not look in the direction to which he points; they will not suspect Cunningham, Robinson or Davis. I don't know, says Lyon, the person who came with Robinson to my shop, to look at the doors and locks, when they were in my possession; but ask Robinson, and he will probably tell you; I suspect that man, however. They ask, why do you suspect him?—we are not to judge without you assign the reason of your suspicion. He gave them the reason of his suspicion: when I went to buy some peaches at Market-street ferry, I saw them sitting at the window of a tavern, and they looked confused when they saw me approach; I saw and noticed it, and therefore did not go near them; but they observed that I saw the confusion in their countenances; Robinson called me to the window; they were drinking either porter or beer sangaree, but did not ask me to drink; Robinson says to me—Mr. Lyon,

what brought you this way?—are you not afraid of the yellow fever, it broke out here? I answered, what brought you this way?—are you not afraid? Mr. Lyon, says Robinson, do you mean to go out of town? I do not know, says Lyon; but do you mean to go out of town? R. replied he did not know. Then says Mr. Robinson, Mr. Lyon, there is a bar wanting for a door of the bank, mentioning what door, but Lyon did not recollect what door it was that he mentioned. Robinson's companion Davis, replied, Damn it, there will be no occasion for that. Lyon answered them, he was ready for them at all times. He left them, and went to a peach boat, and bought some peaches, carried them to his shop, and gave his apprentice some of them. He said to his apprentice, Jeamie, I saw Robinson and that stranger at Market-street ferry, who were in our shop while we were doing the iron doors; they seemed to be in a deep study, and I do not think they are after any good.

Now compare their conduct in following up this clue, with the eagerness displayed by Annesley in hunting after John Boyd, upon no better information than overhearing some strangers talking at the corner of a street. You are not by harsh epithets to stigmatize the defendant, but how will you unravel the enigma, that while they let the real criminal run at large, after the discovery of his criminality, and yet keep Patrick Lyon locked up in a close and solitary cell. I now repeat, that this examination puts an end to every claim of the defendants in justification of their conduct on the ground of probable cause; for you recollect, that not only probable cause must exist, but that the parties must not be guilty of negligence; for if he is, it destroys all pretensions to the plea of probable cause; I pronounce it to be guilt not to proceed in the enquiry, when they had the means put into their hands. This, gentlemen, shews the vile abuses of the officers of the bank in their prosecution of Lyon. He put the means into their hands, by which they might have detected the robbers; they neglect to do it; and to show their pertinacity, they hesitate not to declare that they will persecute Lyon to all eternity, and defend themselves on the ground that they had a right to suspect him.

But says Mr. Ingersol, he points out Davis after he knew of Cunningham's death, I dont understand this, to what does it allude, it will not answer their purpose to say, that Lyon was a party with Davis: because it has been shewn,

that they were altogether unacquainted; this ought to rescue Lyon from any participation in the guilt, so far as Davis is concerned: he could not point out Davis by name, but referred them to Robinson.—But suppose Lyon had been connected with Davis, will any man possessed of common sense, imagine that Lyon would point out the quarter for them to enquire into; where he was sure of implication; upon the whole, it appears to me that Lyon acted as an innocent man would do; and that the defendants not only neglected to do their duty, but prosecuted Lyon when they had not the slightest ground of probable cause to suspect him.

It was said by Mr. Ingersol, that it was possible for three persons to be concerned in a project whilst only two of them acted in concert.—This hypothesis, may do by way of argument, but is it probable, that it was the arrangement in the case of the robbery of the bank.—If Lyon made the false keys, and was to have his share of the plunder, would he have wanted money to defray the expence of his journey from Lewistown to Philadelphia, and have been obliged to pledge his watch. If Cunningham and Lyon were connected, and through Cunningham and Davis, would he point to Davis, when he knew it must reflect back to himself; they have not presumed to show a connection between the three, nor is there the slightest ground to suppose there was any intercourse between Cunningham and Lyon—true, a feeble voice was uttered by Davis, connecting Cunningham and Lyon together as the defendants represent in their communication to the legislature—persons who tell untruths, ought to have good memories: did not Cunningham, after getting his warrant for the apprehension of Lyon, which he was authorized to serve, according to the testimony of Mr. Annesley, ask where Lyon lived and where was his shop, for he did not know, and *required* Mr. Annesley to go with him and point out the place: would not this appear, that the eyes of the defendants were shut against the light of the meridian sun at its hight, and shall their excluding the light, justify them in pursuing their walk in darkness; this doctrine once received will justify men, persisting in error, after conviction; a doctrine not known either in our statute or common law. I cannot repeat it too often, the defendants after having recovered the money, of which the institution was robbed, still persist in persecuting my client, if this is not proof of a most malignant, malicious and persecuting spirit, I *know* not what it is.

When the party has received satisfaction, by the return of the goods stolen, by the hands of the robber, who makes to them an ample confession, and on which confession, under the proclamation of the governor he is pardoned for his offence, and suffered to go at large; when this has been done, shall an innocent person be confined in jail by his persecutors, and the law permit them to justify themselves on the plea, that they had once at some subsequent time, had reason, say unfounded reason to suspect him! Heavens forbid it! if this shall be stated, and received as the law of Pennsylvania, I will never value the laws and constitution of Pennsylvania, as I have hitherto done.

What was done by these gentlemen in consequence of the communication received from Lyon? Haines says, that he was insulted and imposed upon, when he took Lyon before Stocker for the second examination, for he told them a trifling story. What does Fox? he would not inquire into the train pointed out by Lyon; nor when the same tract was mentioned before the chief justice, he still persists, that Davis was a respectable man.—It was this circumstance that led the magistrate out of the course of his duty, and to refuse to discharge him without bail. Haines, in a conversation with Lace, is asked, why don't you look after that man? and answers, that Lyon is trifling with them. Every man who has heard this trial must be convinced, that their negligence was extremely gross; that no man could be guilty of greater inattention than they have been; and I venture to assert, and the proof is at hand, or has been already given, that they determined to make their stand on ground altogether untenable, but which they vainly hoped by their wealth to maintain.—I repeat, that they meant to conceal themselves, and escape under the noise they had raised, by the jingle of false keys and Patrick Lyon.—Oh! say they, the doors were opened by false keys, and we will persuade the public that we have in no wise been to blame. The true keys must be kept out of sight.—I beg the jury to associate in their minds another fact: they will not enquire of Robinson, and obtain the name of this stranger; but what do they do, they take out a search warrant for Cunningham, to search his lodgings after he was dead, on the twelfth September; then I take it for granted, they had changed their opinion of that man, it must have been on information more cogent, than that of Lyon to Stocker: what was this information? Was

it any thing obtained from Cunningham in his last moments? If so where is the confession of Cunningham? Where is the evidence on which they have changed their mind? They state in their communications to the Legislator; that there was cause to suspect that Cunningham was concerned. I ask them for information, what was the cause? we ought to hear it! they should tell us! there is a mystery hangs upon this subject, and it is difficult for us to develope it. The like in some measure, is the case with Davis's examination: we never heard any thing of this, except what they communicated to the legislatue, in their own defence: it is probable, that we should not have heard of this, but that he was totally unacquainted with Lyon. I say, at the time that that man died, or when they first suspected him, or when they discovered that Davis had committed the robbery, all idea respecting Lyon ought to have vanished, this gross negligence; I repeat it, is a mark of base malice, on the part of the officers of the bank. You will excuse me in repeating the circumstance, it is in the discharge of the duty I owe to my client.

If Davis had gone off between the 16th of October, and 20th November, how would the officers of the institution answer to the public for their negligence in following up the track which was pointed out to them, and which they entered upon, when they took out the search warrant, and which would expose the state to the loss of one half of the sum stolen; this in my opinion shows them totally unfit to be trusted with the care of that institution. That they should leave the money in the hands of the robber for such a length of time, after they had the clue to reach him, their motive could be no other than to establish their alledged suspicion, that the doors were opened with false keys, and those false keys could only be furnished by Patrick Lyon.

The next step will lead us to the habeas corpus issued on 21st October, 1798; this is a proper mean for a man conscious of his innocence to pursue; but Lyon had other motives, the dreadful sufferings which he endured, and the danger to which his life was exposed, by being confined within the walls of a prison, where the yellow fever raged, all join to induce him to try what the justice of his country would do for him. I agree that the conversation took place between Mr. Lace and Mr. Stocker, respecting the *habeas corpus*, which appeared to be friendly; but Lace adds, that Mr.

Stocker turned against him shortly after; Mr. Fox, on the discovery of the robber, said, that the directors, leave the law to take its course, surely the law would have its course; and could not be thrust aside by bank influence. But did they leave the law to take its course? When they could no longer personally appear, they employed others, they were not satisfied to leave the prosecution to the attorney general, who is the proper prosecuting officer, but Mr. Fox accompanied by Mr. Ingersol, join in the persecution on the part of the bank; and what took place on their side? Only a partial disclosure of the facts they possessed a knowlege of; they state their suspicions, and when Lyon points out the proper person to be pursued, they turn aside, and refuse to make iuquiry, they say it would be fruitless to look after Robinson or the other, for they are men of good character. No wonder that an interference of this kind, led the chief justice astray, he is a humane man, and would have relieved Lyon from imprisonment, had he been suffered to be made acquainted with the whole of the cause. No person is more particular than judge Shippen, but see how his mind was put off his guard: will it be said, that the judge could decide with his usual accuracy, when the circumstances were withheld from his knowledge, or prevented in their disclosure, by the president of the bank, and his fee'd counsel who attended the examination.

I mentioned last night, that he who suppressed a fact was equally guilty with him who expressed a falsehood. I ask, was there any mention before judge Shippen of the information, on which the warrant to search Cuuningham's lodgings was issued? I ask, whether there was any mention of the situation in which the bank was found by Annesley? or, in short, was any thing said that could lead judge Shippen to suspect the robbery proceeded from any other quarter, than that through Lyon, though the officers of the bank had knowlege of another, for they had searched Cunninghams' quarters;—here you will give me leave to advert to a declaration of Mr. Lewis's, that the decision which took place under a regular inquiry made before the chief justice, is conclusive evidence, that the present prosecution is not malicious, that the previous proceedings were justified, for even on the *habeas corpus* Lyon was held to bail—I deny the conclusion. On the generality of the statement, if modified and qualified, it is a correct position. A prosecution will

not delay against a magistrate, for what he has done in his office; for instance, if Stocker had taken upon him to determine on the case of Lyon, in the first instance, upon the oath of any person, who could show probable cause for suspecting him, he might have been justified, though subsequently no probable cause should appear, there have been regular adjudications by some of our tirbunals, on this subject, this was Wilson's case. Mr. Ingersol in that cause did not venture on this ground, he did not say an action could not be maintained against a magistrate, who acted on other person's suspicions without pursuing the regular *formula.*

The result is, that malice is expressed or implied, if there is not reasonable or probable cause; mere suspicions, and those ill founded, will never be considered as amounting to reasonable or probable cause; it is sufficient that the bill of indictment, which was presented against him, was returned ignoramus, by the grand jury, who heard only the testimony against him. But gentlemen of the jury, this reasonable or probable cause, is for your investigation, and you have heard the facts that have been ascertained.

The grand jury are not to try the person on the full discussion of the case, but they are only to enquire on the *exparte* testimony, produced by the public accuser.—They enquire merely whether their is probable cause to put the accused on his trial before the pettit jury.

And if a grand jury return the bill ignoramus they say there is not probable cause.

The next question is, whether the defendants Fox, Smith and Haines continued their persecution before the grand jury. They were witnesses before the grand jury, *non constat*, those that are marked on the bill are supposed to be examined before that inquest, and that they are all therefore implicated: to that point I cite Buller's *nisi prius* 14 where he lays it down if one only be found guilty it is sufficient, and implicates the whole of the others.

Mr. Lewis. Do you say that a bill sent to a grand jury and returned ignoramus is ground for a malicious prosecution against witnesses? It is nothing more than that the public prosecutor consider him a material witness and on that account he fixed his name to the bill.

Mr. Dallas they lent their names to be examined for the purpose and the presumption is that they were examined; they had before practised all this art and preserved

in it, in order to make believe, that they still continued to entertain some reasonable suspicion; but I think without probable cause: what they had done before judge Shippen; they are ready now to do before a grand jury; I do not insinuate that they have told an untruth, on any of these occasions, but I am free to aver, that I believe they have suppressed part of the truth, on every occasion, and that they have implicated Lyon, with their jingle of the false keys, in order to avoid being considered as the officers of the bank possessed of the true keys, negligent and inattentive, the evidence to that point runs so strong, that it would wash away all the flimsy stuff, with which their counsel have surrounded them, their basis, is a quick-sand and their superstructure of rotten and mouldering materials.

The fourth point, or next period is the facts which relate to the discovery of Davis; how is this memorable discovery introduced to the legislature? The search warrant I have so frequently mentioned was issued the 12th September, a hint was given to them on the 20th October which might have led to the discovery, now any dignified or honorable gentlemen may make such a statement as this, when they had actually done nothing, but apprehended Pat Lyon who was innocent.—Would any man use this language which they have used " after much painful anxiety and unceasing vigilence on the part of the officers of the bank" now of what character was this unceasing vigilence, they had information, which would lead to Davis, but they never pursued it, for they confess that the first circumstance; which excited the suspicions of the president and cashier against him was a deposit of sixteen hundred dollars and that their suspicions were confirmed on the 17th November by a further deposit of three thousand nine hundred and ten. They did every thing to avoid looking towards this man, as long as they could, possibly avoid it, they turned aside from every thing in order to keep in view the false keys, and Pat Lyon, they kept from the public sight, all this anxiety, and vigilance, which they boast of; it must be the false keys and Patrick Lyon which effected the robbery; Davis the intimate of the cashier; a lounger at the bank; the acquaintance of Robinson, is spoken of in their communication, as if he was a perfect stranger to them: they say " *one* Isaac Davis, a carpenter by trade, had an account opened at the bank.—Inquiry was made as to his circumstances, and character: which were

found to be such as induced the officers, to watch his conduct,' from this manner of speaking you would suppose, they had never heard of him before, and yet Mr. Fox when made acquainted with the name of the sharper, before judge Shippen, declared Mr. Davis an amiable man, the cashier Smith invited him to his house, where he made disclosures which criminated only Cunningham the porter, for he repeatedly declared that they alone were concerned in the robbery. On the 20th November they got all the mony back except a small sum, say two thousand two hundred dollars, after this where is there a shadow proof, that Lyon was concerned, where can you find any thing that will justify them in a further prosecution of Lyon, and yet on the 14th December when he was before the supreme court, on a *habeas corpus*, they urged nothing against him but that he was a skilful workman and had been employed by them. Here I take my stand, and assert from this time forward they had not the least semblance of probable cause, to justify them; and that it became then their bounden duty to withdraw from the prosecution; yet still we find them with fee'd bank-counsel proceeding still against him and leading the court to fix the bail. I say that whatever might have been their antecedent excuse, in *strict* law they had none, and it is strict law they ask, then in *strict* law all excuse from that moment became inadmissable, and the law not only implies but affirms malice for the want of probable cause.

The declaration of Davis, that no person but Cunningham and himself were concerned, ought at once to have fixed on their minds that the robbery was committed through the means of the genuine keys; which were frequently, if not usually, entrusted to Cunningham, and not by the means of false keys which appeared to have been altogether unnecessary.

When they were before the Supreme Court, not a word was said by Mr. Fox, or his counsel, that Davis had exculpated Lyon from all participation in the robbery. I appeal to you as jurors, and I would appeal to you as citizens, like those who so numerously surround us, to say, whether if that disclosure had been made by them at the time Lyon was before the Supreme Court; the court would have required of Lyon to enter into any bail whatsoever, without a knowledge of that circumstance; the court, however, reduced the bail from 6,000 to 2,000 dollars. False keys and Patrick

Lyon was the order of that day, and continues to be the order of the present day; although seven years are elapsed: they were not ignorant at that time, nor are they ignorant now, that they were persecuting an innocent man. They said they would leave the law have its course, has this cause been left to a due course of law? No—Fox and Smith have appeared throughout to act with Rawle and their other counsellors, who have taken a part in this prosecution. Stocker appears also, on every occasion to have joined them, being thus assimulated the act of each attaches to the whole, for they have acted together. Is this not evidence of a persevering hostility? It stamps the public mind with the opinion, that the officers of the bank has been vigilant in nothing but in their search after Patrick Lyon and the false keys, which keys they have not been able to find to the present day.

Turning again to the proceedings before the legislature, no degree of malevolence against the plaintiff could exceed that—except the defence set up in the present cause, it is that cruel and indelible mark attempted to be fixed on the character of Lyon, by their perseverance to the present hour, is this no indication of malice; when he was bound over, and the grand jury was setting that, at that moment they go to a committee of the legislature and insinuate that the robbery could only be done by false keys manufactured by Patrick Lyon, is this not proof of their cool determination to destroy this man? What motives could they have had, but to cover themselves from the suspicion, that the true keys were employed, by insisting at that late day that false keys were used. If they had, as I said before, produced the true keys on the morning after the robbery to each other, viz. Annesley and Smith, who each kept one, it might have been some excuse for supposing that false keys had been employed. When the bank door was found open in Lodge-alley, it is not pretended that they were opened by false keys, neither is there any ground that the robbers used false keys in opening the cash vaults at Carpenter's-hall.

Now to the fifth and last point in the order of time, the presentment and rejection of the bill of indictment, before and by the grand jury. So long as the records of Pennsylvania exist, so long this stigma placed on the journals of the assembly remain; so long as the records of this court exist, so long will it be known that a bill was presented against Patrick

Lyon as an accomplice in the robbery of the bank of Pennsylvania; that story has had its range over the whole world, much industry has been used to give it that spread, while the defence of innocence comes limping after; a period of seven years which the laws delay, much to be regreted, furnishes now a contradiction which will never be entered on the journals of the house of representatives. This perseverance has in it more marks of cruelty and malevolence in hunting down by private character, than ever was known in any other country and never heard of in the United States.

I will now proceed to enquire whether the defendants in instituting the charge against Patrick Lyon did it with a view to public justice, or some sinister end, their motive must be explained by the evidence; that evidence exist in oral and written testimony containing all the circumstances of the whole transaction, if I can show that there was no probable cause, the law will imply malice. I have, however, shewn there was no probable cause, therefore the prosecution must have been entered upon from malicious motives. But I imply malice also because there existed a more powerful motive of action deeply interesting to the prosecutors, I imply it from the misrepresentations made to the legislature, I imply it from the suppresssion of the truth before the supreme court, I imply it in their persisting in the employment of false keys, when the fact shows that the real keys were used—for this I refer to the negligence of the bank officers both before and after the robbery, the doors had been found open as they alledge by false keys, yet the locks were not changed, for in November they were taken off by Mr. Wheeler and fastened on again—if they believed false keys had been employed on opening them, they ought to have exchanged the locks or procured the false keys, which their unceasing vigilence has not even to this minute obtained. I refer to Davis's confession, to the reason which induced them to take out a search warrant against Cunningham. I refer to the measures, they took in regard to Davis, they let him *run*. No doubt they wanted to get back the money, that was one object. But they had another more dear to themselves, they wanted to preserve their character from the imputation of negligence.

Their treatment of Davis the culprit, and their treatment of the innocent Lyon—The one they pretended to suspect and confine—the other who had acknowledged himself guilty

has escaped by their permission. Why had they not Davis before the court. It was a punctilio of honor says, Mr. Wharton, as they had obtained the money back from Davis, they left him to his own discretion—This punctilio of honor is then reason for the non-prosecution of that man—yet this punctilio of honor did not bind them altogether, for on their evidence a bill of indictment was found against him by the grand jury which returned the bill against Lyon, *ignoramus*, if Davis had been here, Lyon could have had the benefit of his testimony, for they had acknowledged that Davis declared to them that no person but himself and Cunningham was concerned in the robbery—The pardon by the governor was conditional, it was that the party " make a full and satisfactory disclosure of all the circumstances relative to the contriving and accomplishing of the crime and of the names and places of abode of his or her associates so that the asociates may be apprehended and convicted;" the defendants had this man in their power and they ought to have detained him till he made that full and satisfactory disclosure before the supreme court, their suffering him to go at large at his own discretion was an assumption of power under the proclamation I hesitate not to say, a criminal act on their part—was that man here, he might tell the story of open doors and genuine keys, but such testimony would destroy their jingling story of false keys and Patrick Lyon—These circumstances shew that they were desirous, Davis should keep out of the way—they have made no exertions to have him here, but Lyon has, as appears by the letter he wrote to Davis's mother to get him to come forward—how different is the conduct of the accused and the accusers.

I now get my opponents into a dilemma. The pardon is on conditions, it is predicated on two objects—first that the party makes a full disclosure, second that he makes restoration: he restored the money, that part is then complied with. And now they believed he had disclosed the name of every one of his accomplices, for it gave no sanction to his pardon but on condition that he made a full disclosure of their names and places of abode—but he named the names and places of abode of his accomplices—he mentioned that Cunningham and himself were the only persons concerned—they were satisfied that he had made the disclosure required by the proclamation of all his associates—he did not disclose or insinuate that Patrick Lyon was concerned—If then they

let him go at large, as having by his disclosure made known to them the names of all his accomplices, they could not any longer suspect Lyon—or if they still suspect Lyon, they must suspect him on the ground that Davis had not made a full disclosure, and consequently they were not entitled to let Davis go at large, which was to be the consequence only in case of a full disclosure of all his accomplices. I have stated the want of probable cause justifies me in implying malice; I now say that there is express malice proved, with respect to each. They acted in concert with each other on all occasions; each acts for the other; they even spoke for each other when they were before Stocker; they all acted in concert to produce a malicious and unlawful act, when they were before judge Shippen. Mr. Fox appeared in behalf of the whole; when the bill of *indictment* was sent to the grand jury, all their names were fixed to it as witnesses.

After the bills were returned ignoramus, the malice which blackened the heart of Smith the cashier, is proven by his conversation with Cave; the malice of Haines was proven by his conversation with Mr. Lace; the threats of Stocker mark strongly a malignant fiend, when he said he would keep him in jail till he rotted, and as long as he would hang together; and Mr. Fox shews malice by concealment of the truth.

With respect to the threats of Mr. Smith, and the language he used in expressing them, we have that established sufficiently in the testimony of J. Rizer. The testimony of that man they have attempted to bring into doubt; but I think they have failed. Mr. Ingersol, however, has said, that Mr. Smith's delicacy was so extreme, that he could not believe any thing on earth could induce him to use the name of God in affirmance of any thing which he even believed to be true; that even in reading the testimony, he could not muster up resolution in repeat it. I do not know that this extreme delicacy is a mark of a virtuous mind; it appears to me rather to be a matter of affectation. I recollect a story which I think pertinent on the present occasion; in the west of England, there lived a curate, considerably advanced in years, a man of piety and eminent learning, with a large family; he supported the whole upon a stipend of fifty pounds a year. The incumbent rector dying, the curate applied to the person who was to succeed the rector, (as he had been promised the presentment,) to continue him in the curacy; but the gentleman having promised it to one of his connections,

could not comply with the curate's request. The old man, upon this refusal, got a petition signed by the parishioners, and mustered the little stock of money he had at command, and went up to London, to solicit the arch-bishop's interest in his behalf. He told his affecting story, and the bishop was so moved at it, that he recommended him to return, and use his name, which would probably induce the gentleman to continue him in the curacy, and desired him to call upon him and inform him of the result. While the curate was gone on this errand, the bishop took the opportunity of enquiring into the character of the man, and found it to be altogether unexceptionable. The curate came back at the time appointed, and told his lordship the rector still refused to him the curacy. His lordship told him that he was sorry for it; but it was really out of his power to grant him the curacy, as that appointment was absolute in the rector. The poor curate, shocked at the prospect before him, became pale and ready to faint, (like Patrick Lyon when he was falsely accused of robbing the bank.) Then, exclaimed the curate, I am nndone for ever; my family look alone to me for support, and I shall be unable to afford it. The bishop, moved by this affecting scene, but probably predetermined, said to the curate, that although I cannot give you the curacy, I will give you the rectorship. In the agony of surprise, the curate clasping his hands, exclaimed, "*Will you, by God?*" "*Yes*, (says the bishop, warmly embracing him,) *by the living God, I will!*" Now, gentlemen of the jury, I will venture to say, that if the whole of his parishioners had been called upon to testify as to his character, they would every one of them have disclaimed the possibility that he could swear, or use the name of God profanely. On this occasion, you see that the bishop, so far from considering it a crime, joined in the asseveration.

I do not impute to Mr. Smith, that he is in the habit of swearing; but the testimony of J. Rizer, on that point, is affirmative, that he could swear and curse too, when alone in the presence of his barber. That he could swear, is confirmed by the testimony of his house-keeper. But it will be said, he swore only when he was vexed; he was vexed with the misconduct of his negro boy when he swore at him; much greater reason had he to be vexed when he swore at Patrick Lyon, who had escaped from his snares, which are now likely to entangle himself.

To me it is more probable that Smith swore as represented by J. Rizer, than that J. Rizer swore to an untruth at the moment he was stepping into his grave. I could tell you a story of one of the gentlemen, who knocked down another gentleman, when I was present; yet I believe all the rest of his acquaintance would swear, that they do not consider him capable of such violence; for he is a man remarkable for his civility and urbanity. But as for Mr. Smith, if you believe Rizer, a more virulent disposition never existed in the breast of any man against another, than was entertained by Smith against my client; and which appears from the course pursued on this trial, still to be harbored by him; for it has been declared by him, since this trial has been going on, that Lyon was as guilty of the robbery as Davis. Is this no evidence of malice? Yes; it is evidence of the highest degree of malice, and ought to be punished with the utmost severity of the law; but on this action, nothing more can be done than to award high damages.

I will consider what damages ought to be given in this case, in reply to what Mr. Lewis said of leaving the quantum to the dictum of the judges. The quantum of damage rests exclusively with the jury; who are to form their opinion from the facts. Of the facts which govern that opinion, the court cannot judge; and lord Mansfield was of our opinion, as laid down in 4 Burr. 1974, on an application for a new trial, where he says as to the excessiveness of the damages,—"It does not appear by the verdict, how far the jury gave it upon the bill, or how far they gave it upon the whole circumstances of the case taken together." Again. "The end and tendency of these two indictments, was to drive the man from his business; this was sworn to be the prosecutor's view in preferring them, and they might affect the man's credit." Again. "There are many circumstances which make it reasonable not to indulge the plaintiff in sending it to a new litigation, only to abate the *quantum* of damages, when he has been so much in the wrong." Now, in the present case, I contend, that the damages ought not only to be compensatory, but exemplary, so as to hold up a warning to all persons acting under the like circumstances. Stocker and Haines acted contrary to their duty as public officers; and it has been proven that they both entertained malice against Patrick Lyon. An example, therefore, ought to be *made* of both of them, to deter others from pursuing a like *course*.

Smith and Fox, officers of the bank, should be punished, in order to deter other monied institutions from oppressing individuals, as my client has been oppressed. Your verdict ought to give them a warning, not to employ their influence in such a wanton matter. It is the characteristic of corporate bodies, feeling power, to forget right. These defendants have felt and exercised their own powers, whilst they have forgot the rights secured by the constitution and laws of our country, to my client.

Reports have been introduced on their side of the question ———

Judge YATES. That conversation was entertained at a dinner table; I was present, and told them, it was improper to talk on such a subject in my presence.

DALLAS. Quitting under your direction, I turn to discount days, where they act as they please: they are in conclave; and there they may manufacture slanderous aspersions, and prosecutions, nay, and of persecutions, against any man, even you gentlemen of the jury, may feel it hereafter, on some discount day. Their charter does not allow them to attack in conclave the character of any man. Mr. Hopkinson has discussed this part of their conduct; he has left me nothing to say. Gentlemen of the jury, you will recollect, and you will understand it.

Gentlemen of the jury, you will take into consideration the place in which Patrick Lyon was confined.

I feel myself exhausted, and must hurry to a conclusion.

If a man committed regularly to jail, was to remain there without probable cause, it would produce disgust in your minds: but Patrick Lyon was irregularly committed to jail, without either reasonable or probable cause; and subjected to the caprice of the jailor. Whatever personal injury he received, whilst in confinement—whatever privations he suffered, are all to be compensated to him by the defendants, who are the authors; and the severities which were exercised towards him, are of the cruelest nature—such as are not experienced by the vilest criminal confined within the walls of your penitentiary. He was close immured in a solitary cell, where if he was perishing with thirst, he could not have received a single drop of water—the bars of his door were so close, that you could not put your hand between them. Not only admittance was denied to his friends, but the victuals that were sent to him in the morning, was found

remaining in the outer room in the evening, in the same situation in which it had been left—during which time Lyon was left without any thing either to eat or drink. What signifies, what we are told here by Mr. Lownes, what is it to Lyon, who had nothing either to eat or drink, that you give him a pamphlet? He asks for bread, and you give a stone.

You will compensate him for the loss of his stock in trade, for his loss of time, and for the probable profits he would have made. You will compensate him for his loss of custom. He not only lost the custom of that bank, but also of all the banks in Philadelphia; he lost the custom of the defendants, and also of those citizens whom they could influence; he lost the custom generally of this city, and of several respectable institutions in other states; and he has irretrievably lost much custom which I cannot designate.

You must also take into view the expences he has been at in defending himself, and which he has incurred by the present action. When I consider all these things, I cannot find an example for your imitation; the books furnish no precedent of adequate damages; an outrage so gross has never been suffered by any man. The quantum of damage is but 50,000 dollars. 500,000 dollars would not compensate him for the loss of his fair fame and good name. In England, higher damages, if we judge from what has taken place in actions of a similar nature, have been given. In our court, Dr. Rush recovered 5000 dollars of Cobbet, for publishing a libel on his practice; and yet it will not be alledged at this day, that Dr. Rush's reputation suffered any thing by Cobbet's slander.

With this general remark, I take my leave of the cause. I trust that Lyon will be made the means of establishing a precedent, not only useful to yourselves, but to posterity. I pray that God, who protected Lyon from the persecutions of his enemies, and in the dungeon from the pestilence and the famine, will enlighten and direct your minds in forming a verdict consistent with the justice of my client's cause.

Eodem die.

CHARGE OF JUDGE YATES.

AT length, gentlemen of the jury, we have reached nearly the end of this tedious but important cause; this action has been introduced by Patrick Lyon against Messrs. *Fox*, Smith, Stocker, and Haines, and they are attached to

answer him in a plea of trespass on the case: the declaration which is filed, states the cause of complaint, also the good character of the plaintiff, that he had never been suspected to have been guilty of or concerned in any robbery, burglary, or larceny, or any such crime or offence. Yet the defendants, well knowing this, have falsely and maliciously, without any reasonable or probable cause, charged and accused the plaintiff with robbing the bank of Pennsylvania, on the night of the first of September, 1798, and that afterwards, on the 21st of September, in the same year, without reasonable or probable cause procured him to be arrested, and taken into custody for the supposed offence. That they falsely and maliciously, without any reasonable or probable cause, procured him to be committed to the public jail, where he was detained until December 14th, when he was discharged on bail to appear at the next mayor's court, to answer such charge as might be preferred against him.

Also, that the defendants did falsely and maliciously, and without any reasonable or public cause, on the seventh of January, 1799, prefer a bill of indictment to the grand jury, charging, and accusing him of being concerned with a certain Isaac Davis, in robbing the said bank of 164,000 dollars in bank notes, &c.

Also, that the plaintiff did incite, move, procure, and abet, the said Isaac Davis to commit the felony before mentioned. That the defendants did maliciously strive and endeavour to sustain the same as a true bill against Patrick Lyon, but the grand inquest returned, that the bill as against Isaac Davis was a true bill, but as to Patrick Lyon, they returned it ignoramus, whereupon, he was in due form of law acquitted and discharged. By means of these prosecutions and wrongs, done and committed by the defendants, the plaintiff has been injured and prejudiced in his good name, fame and reputation, and otherwise damnified, to the amount of 50,000 dollars. The case is now before the jury for their decision.

The gist of the question is, did the defendants prosecute Patrick Lyon in the manner set forth falsely and maliciously, without reasonable or probable cause. Without this is proved the action cannot be sustained, the jury will bear in mind, that they are not trying the innocence or guilt of Patrick Lyon, but whether the defendants had reasonable cause for suspecting him of being concerned in the robbery at

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time they prosecuted him; or whether, that prosecution was not only unjust but malicious if they had probable cause, they are not liable in damages, nor will malice be inferred.

Formerly it was held, that damages must be proved, 'tis not so now, the quantum of damage may be inferred; it is also settled in the law, that on a prosecution without probable cause, malice may be implied; but where there is probable cause malice shall not be inferred, and malice is the pivot on which this cause must turn.

The principle of the law is founded in sound policy, and secures the due administration of justice; calculated for the common safety of the prosecutors and the prosecuted: without this great discouragement will be held out against prosecutions on suspicion. Blackston is very full on this point, and was cited by the defendants counsel (Mr. Ingersol,) vid. Postea, p. 106.

It is of importance to the community, that where offences are committed, the offender should be punished, and this without regard to persons; every one is interested in the common cause, the rich and the poor, the master and the servant are equally affected, the tradesman who depends upon his labour for his existence, is to be regarded as much as any other member of the community. Wealth and respectability of character should not weigh as a feather in the scale, when another man's rights are violated. It is unquestionably true, that in our country at least, we stand upon the rights of man, neither wealth nor office create an unequal standing, or give to any man a superiority over his fellow citizens.

Something has been mentioned, of conversations out of doors, the jury however, will not listen to any thing they have heard in this way, but they will confine themselves, and form their opinion from the evidence they have heard in this court.

I will not be prolix, yet I must repeat and press particularly on your minds, that malice on the part of the defendants ought to be proved also, that the prosecution was without probable cause; both these points must be proved and not implied. The fact of malice, must be proved, upon the real guilt, and not pretended guilt of the parties. The court in stating the case to the jury, will mark out precisely what express malice is, in its legal acceptation.

Fox,

With respect to Mr. Fox, it is urged against him from the part he took in the original prosecution of Lyon, that he was actuated by malicious motives: to this the defence has been set up, that he is justified from the station he held in the institution, being president; and consequently bound to superintend its affairs. If he did not go beyond the bounds of his duty he would not be criminal, and those boundaries are determined by sound discretion; he may have acted indiscreetly, and it may so appear under all the circumstances of the case, but he has not been guilty of any offence against the civil rights of the plaintiff, unless he has acted without probable cause, and from malicious motives; but if he has acted in this manner, he is liable to Lyon in damages on this action, for a malicious prosecution; now, what is the testimony on this point.

He was present at the examination before Stocker, and upon a *habeas corpus* he appeared also before Judge Shippen; he afterwards appeared on a like writ before this court and on all occasions he is said to have been temperate in his manner, so that express malice on those occasions is not proved whether it can be imputed from any circumstances mentioned in the deposition of Lace, who says Lyon was much injured by the suspicion of Mr. Fox, is for the jury to determine.

The deposition of J. Rizer, relates to Mr. Smith the cashier: the same doctrine laid down in the last paragraph, also applies to his case. But the jury will consider Mr. Rizers' situation, he was extremely indisposed when his deposition was taken, of course his mind could not be in that calmn state which he enjoyed when in health; you will observe Mr. Smith in that deposition, is made to use language which from all the other testimony, he appears to have been a stranger to; a man of discreet and steady habits is not likely to answer a question, nor upon any certain information to break out in the language attributed to him, Mr. Rizer says to Mr. Smith, that he had seen Lyon, and Mr. Smith said, did you *by God!* what has he got out? the deponent answered yes, and he complains that you have used him cruelly, Mr. Smith replies, *By God* we will use him worse; as if this was not sufficiently wicked, he is made to go on in the same strain of violent language, and says, that the plaintiff might think himself *damn'd* well off, since he had got clear so easy. That after this Mr. Smith continued to

threaten the plaintiff, saying, that he was a *damned rascal*, and that he should be hunted of the country, that they had done his business for him, and that nobody would employ him, that he had lost the work of the bank and of the directors. Rizer says, that he expected Lyon would sue the bank and make them pay for it, that Mr. Smith answered warmly, *He sue us ! !* He cannot sue us, and if he does, we can always have a jury on our side, and at the same time calling Lyon a rascal, scoundrel and the like.

The probability is, that Mr. Smith did not use such intemperate language but the deponent imputed it to him, when his own mind was not perfectly sound by reason of his sickness.

The next testimony against Mr. Smith, is that of Thomas Cave, it contains little more than a conversation about the the robbery of the bank, and an offer on the part of the cashier of 2000 dollars for the apprehension of Lyon; how far this is a proof of malice will depend on other circumstances.

You have also the testimony of Mrs. Pendergrass, to prove this one point as a corroboration of the deposition of Mr. Rizer, she lived some time with Mr. Smith, and has sworn that she has heard him use some harsh epithets when correcting a careless negro boy who lived in his family, that he had called him a *damned scoundrel, and a damned little rascal*, that afterwards, he was turned away for bad behaviour, this took place many years ago, and depends altogether upon the correctness of her memory.

So much for the affirmative evidence in sustaining the charge of malicious prosecution, affirmative evidence gentlemen is strong and irresistable, if not impeached by other circumstances. You have other testimony of the conduct and conversation of Mr. Smith, given by men of the utmost respectability, who have known him from his yearly youth and who have been his companions through life, there is Mr. Sanford who declares Mr. Smith never swares, Mr. Annesley, Mr. Robert Ralston and Mr. Inskeep give similar testimoney; Mr. Robert Ralston says, that he has always considered Mr. Smith as an honest and upright man, that in all situations in which he has seen him whether in convivial or friendly parties he had always found him agreeable, and free from passion, that he never heard him use an indecent or

illiberal expression, nor did he think that he ever called a person a *damned rascal* or any such like opprobrious term.

Mr. Inskeep says, he has known Mr. Smith a number of years that he had been in his company almost daily, and seeing him also in his social and convivial moments where he had observed generally his sobriety and civility, he never heard him use a profane or indelicate expression, he never saw him angry.

The error in Mr. Wharton's testimony discovered from the fact sworn by the keeper of the prison, was evidently an unintentional mistake.

From the general course of the testimony it appears, that Mr. Stocker was rather friendly than otherwise, though some parts shew the contrary. Mr. Lace has sworn that he asked Mr. Stocker if they were going to let Lyon out of prison, he answered no, from which he inferred that Mr. Stocker appeared to have changed as he had before been friendly. The next word was, that he will keep him there as long as he will hang together; these words on the part of Mr. Stocker, if used, in his capacity of minister of justice, are a violation of the duties enjoined upon judges both by our constitution and laws. It is a refusal to do justice without regard to the innocence or guilt of the party. In the case of Morgan against Hews, were a similar complaint had been made it was held that, although the language was warm and resentful, as the threat was not carried into effect it was not deemed sufficient ground for an action of damage for a malicious prosecution. In Mr. Stocker's case several circumstances are mentioned, he had advised the plaintiff in the mode he had best pursue, in order to procure his enlargement, recommended to him to employ a lawyer and procure a *habeas corpus*. He offered on his part also to go to Germantown and speak to the directors in Lyon's favor. When the witness, saw Mr. Stocker again he said he was informed that the directors had determined to keep Lyon in jail, that was after the plaintiff had been before judge Shippen on the *habeas corpus*, and there Mr. Stocker thought Lyon has trifled with the bank directors.

With respect to what Haines did, it appears, that he was appointed to serve the process as a constable, this was his duty, and the circumstances of the robbery of the bank should inspire him to be active, he appears to have done

nothing more than to have labored under impressions unfavorable to the plaintiff, on what he considered to be good grounds for his suspicion; but whether the circumstances that were in his knowledge, at the time, amounted to probable cause, is the province of the jury to determine if there was not probable cause under all the circumstances of the case; the jury will determine how far he was actuated in his subsequent conduct by malicious motives.

The jury must carry up their minds to the periods of time, at which the several circumstances took place, in order to form their judgment on the propriety or impropriety of the conduct of the defendants at those periods respectively; for the defendants could not judge at the first period upon facts then unknown to them, but which have since come to light. They are not gods, they are omniscient, they cannot see what is done in the dark, they can only like other human creatures, draw their inferences from circumstances previously known.

On the 5th day of August, an attempt was made upon the vault door, when the bank was kept in Lodge-alley, as was evident from the grinding upon the stone jamb, and its being forced two inches by an iron crow-bar. On the 7th of August, the bank was removed to Carpenter's-hall, which was thought to be a secure building; the eastern vault is the one in which the cash was deposited, the doors of which were carried to Patrick Lyon, it does not appear, however, that this circumstance was explained to him: the work was thought to have been delayed, the jury will judge whether it was unreasonably delayed or not. The doors were, however, fixed—and on the night of the 1st of September, the bank was plundered—Coldwater was one of the watchmen of the bank, and he has told you that one of the keys was often trusted to Cunningham, that the other was with Mr. Smith; this circumstance will be duly weighed by the jury, but you must take into view the testimony of Mr. Annesley, who affirms that the evening before the robbery, about four o'clock in the afternoon, the cashier brought him one of the keys and put the other in his pocket, and it was never out of his possession—no person could get into the cash vault unless possessed of both keys—there was no mark of violence on the locks—the jury will, therefore, reflect and determine whether the keys were more likely to be the genuine keys than false ones.

In the report of the bank to the committee of the assembly it is stated among other disclosures made by Davis, that the plan of the robbery originated with Cunningham, *who procured the false keys and that he does not know who made them.* Annesley affirms that he saw the back door open at six o'clock on Sunday morning, at least he found it ajar, he pushed it open and looking into the bank, saw the cash vault door open likewise, he went round to the front door and rapped hard at it, when Cunningham put his head out of the window, he told him to come down and see what a condition the bank was in. Cunningham came down and unlocked the front door, and they went to the cash vault together, and upon calling in the cashier they discovered, on examination, that the teller's box was perfectly empty, and upon calculating there appeared a deficiency of 160,000 dollars. On this discovery they say the suspicion naturally fell on Lyon, they went immediately in pursuit; going to Lyon's shop they found it shut, they went to his house, he was not there, and there was a cobweb in the key hole which lulled suspicion for some time. Yet, Mr. Annesley, a few days after heard some persons in conversation, one of whom mentioned that he had seen Patrick Lyon the day before in the city, Annesley asked him if he knew Patrick Lyon, he said as well as any other man, Annesley asked him his name, he said it was John Boyd and lived in Southwark, after communicating this information to the directors, he was directed to look for Boyd, but it appears that this information was incorrect. However, at the time it was ground for suspecting Lyon.

It appears that Lyon went with his apprentice to Lewistown; this apprentice died in that neighbourhood, on the 4th Sept. There is a story told, that Lyon on his being suspected, immediately returned, and went on foot from Wilmington to this city, this circumstance is greatly in favour of the defendant, as is also the subsequent story of his travelling into the neck, surrendering himself to Mr. Stocker, where he was in want even of a glass of water, his being left at liberty, and his return the next morning to answer any thing that might be alledged against him; the jury have heard these facts stated in evidence, and the arguments on both sides on this point, they are therefore well able to form their own opinion, but it is neither proof of innocence or guilt.

The subsequent precedings are to be the objects of your enquiry. Did the defendants proceed without probable cause? The human mind cannot act without motives, in this case, did they act without probable cause; that also is for the consideration of the jury, the subsequent illucidations may shew the plaintiff to be innocent, but did the defandants know it at that time?

On the 12th of Sept. they had some intimation, that Cunningham the porter might possibly be concerned in the robbery, they examined his house on the same day, but found nothing. Davis on the 19th Nov being in custody of Mr. Fox, the president, and threatened by Mr. Wharton, the then mayor, Davis was induced to give up the residue of the money which he had received from Cunningham on the day of his death.

A *habeas corpus* was obtained for Lyon, to appear before judge Shippen, the idea still remained in Mr. Fox's breast, that Lyon had furnished false keys, on the 14th of December another *habeas corpus* was obtained for Lyon, to appear before the supreme court, and every judge on the bench agreed, that under all the circumstances of the case, the defendant should be liberated on bail himself, in 2000 dollars, and two sureties of a 1000 dollars each, which shews, there had been ground for suspecting him. The report of the committee to the house of representatives, is nothing more than a recital of the representation made to them by the officers of the bank, and does not cast any stigma upon the plaintiff, although it contains an expression of their approbation of their conduct for their exertions in detecting the robbers, and recovering the money stolen.

A bill of indictment was sent to the grand jury on the 10th of January, and returned by them as ignoramus on the 12th. Whether, there was still ground to suspect Lyon, is for the jury to determine, and at what period it ceased; for after all ground of suspicion ceased, the persecution ought to have ceased likewise.

Every humane mind must feel greatly for the sufferings of the plaintiff, under such unfounded suspicions; but though they now appear to be unfounded, they might not have been considered such at the time they were entertained by the defendants. If there were solid or reasonable grounds for suspicion, the law does not imply malice, and malice is *the point in* question. In pursuing his remedy, the plain-

tiff must proceed according to the known and established rules of law; and by them malice is not to be inferred, where there is probable cause. This is now for the jury to determine, whether there was probable cause for suspicion. If there was not, their verdict will go for the damages; and on the amount of damages, they are the sole and exclusive judges—it is a province belonging solely to themselves, and with which the court have nothing to do.

The court will just mention, that any defect there was in the original commitment of the plaintiff to prison, by Mr. Stocker, was remedied—if not fully, by judge Shippen, it was certainly by the court upon the second *habeas corpus*. They, however, acted only on so much of the case as was at that time exhibited to them; it did not determine the question of innocence or guilt, but went to the point of probable cause; and if there had not appeared some reasonable ground of probable cause, judge Shippen or the court would have been then bound to discharge Lyon from confinement.

When the jury retire, they will be allowed every thing that is necessary for their refreshment; and when they make up their verdict, they may seal it up, and deliver it to the court to-morrow morning.

Judge BRACKENRIDGE. The law requires that the defendants should have reasonable ground for suspecting Lyon, during the whole time in which they continued their prosecution against him, or otherwise malice must be imputed to them, for acting without probable cause; and damages should be apportioned by them against the defendants, as is claimed by the present action, if the jury are of opinion that there was no probable cause to suspect him of the robbery.

The jury retired at half past 4 o'clock in the afternoon, and made up their verdict at 8 the same evening, and delivered it into the court the next morning. The verdict was delivered in favor of Patrick Lyon, for 12,000 dollars damages.

The moment the verdict was delivered by the foreman of the jury, an universal clamor of exultation took place among the audience, the most numerous the reporter remembers ever to have assembled in that court room.

Justice Yates ordered silence, and told the citizens applauding, that they were not in a play house, but in a court of justice.

The verdict being recorded:

Mr. Ingersol moved the court to grant a new trial. The motion was postponed till the next term. At the next term, in March, 1806, the case was reached but a few hours before the end of the term, and by consent of the counsel postponed till the following December term, when a new trial was granted by judges Tilghman and Smith.

Mr. Tilghman had been appointed by the governor chief Justice, in the room of C. Justice Shippen, deceased, since the former trial, and judge Smith having sold out his bank stock, found himself at liberty to give his opinion on the motion, neither of them *sat* on the trial, judge Brackenridge, who did *sit* on the trial, still retained his original opinion, that the verdict ought to be conclusive upon the parties: the defendants had not shown any probable cause, but alledged that they suspected Lyon, for his ingenuity; which doctrine if admitted in a court of law, would encourage stupidity and punish genius.

At March term, 1807, the new trial was expected to come on, but was prevented by a compromise which took place between the parties, and Patrick Lyon was paid 9000 dollars damages.

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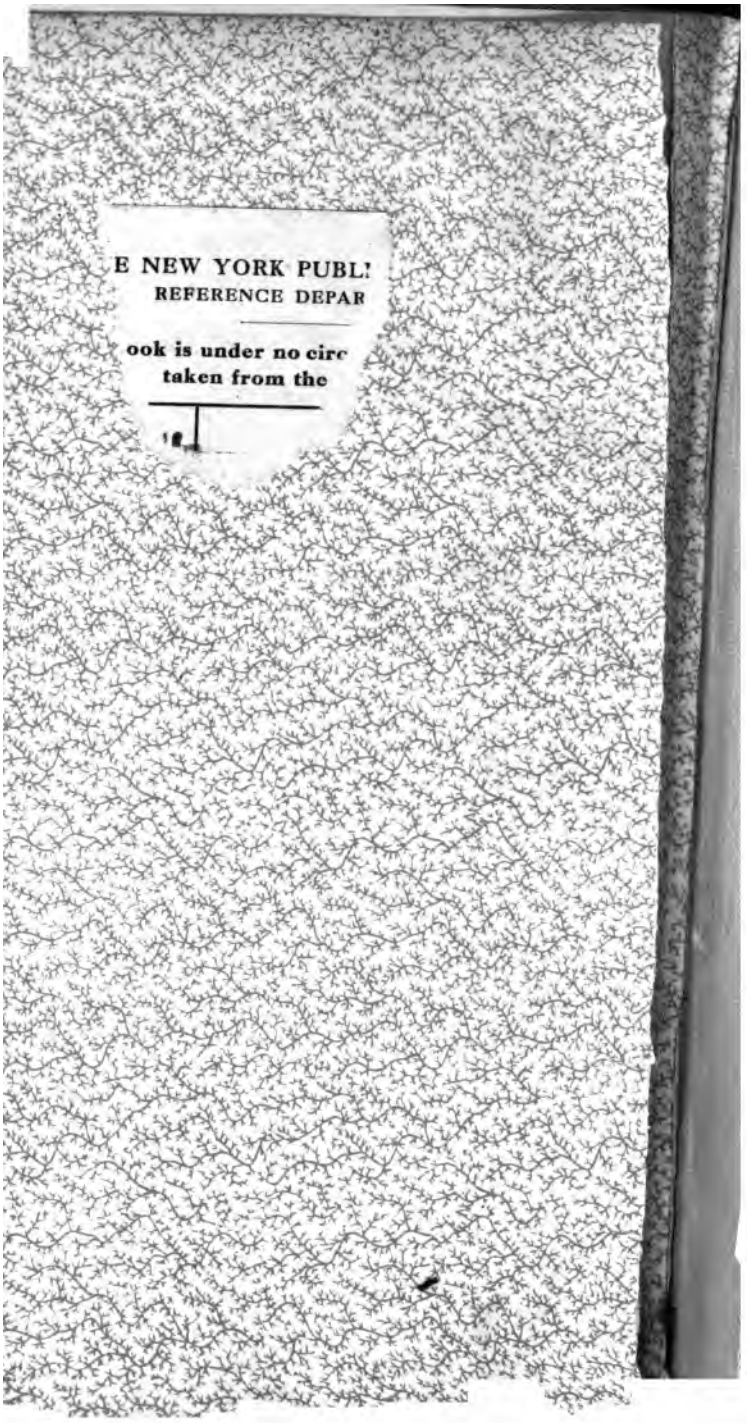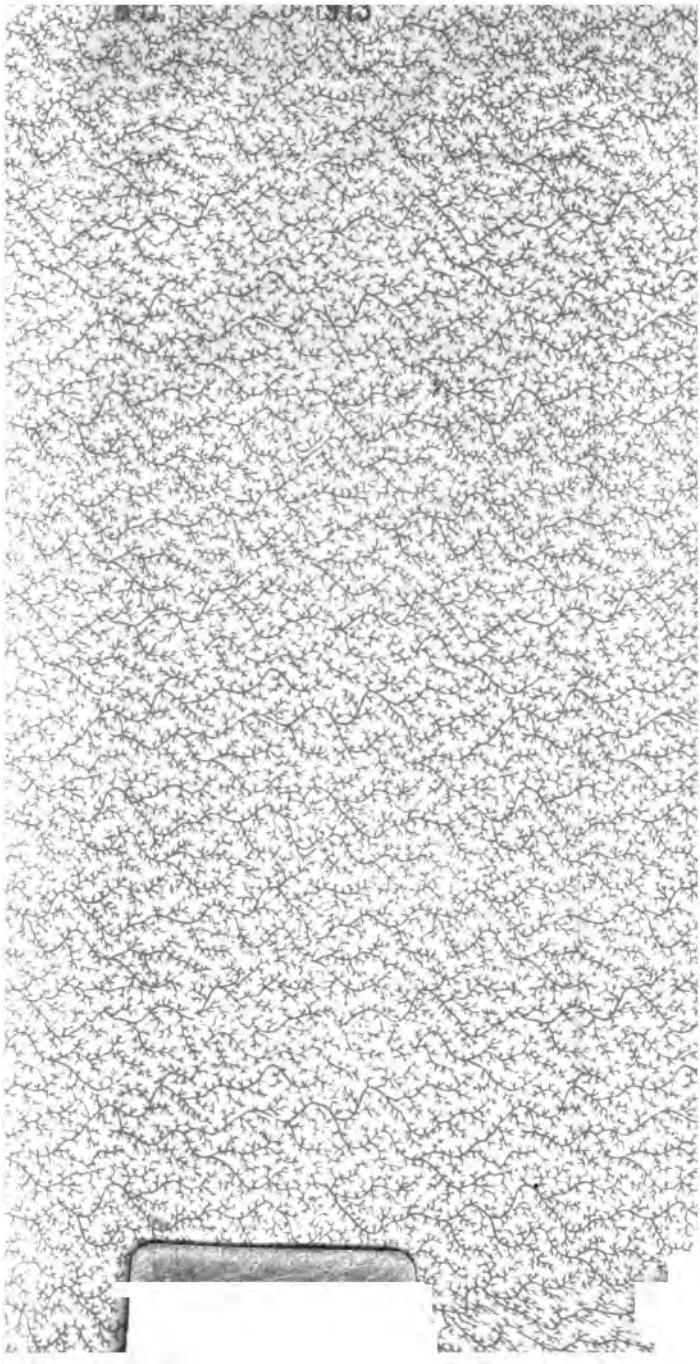
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